TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 867

WASHINGTON SECURITIES COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED OCTOBER 28, 1918.

(23,999)

(23,399)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 824.

WASHINGTON SECURITIES COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellants,
vs.
UNITED STATES OF AMERICA, Appellee.

Transcript of Record.

Upon Appeal from the United States Circuit Court for the Western District of Washinton, Northern Division.

b In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1706.

WASHINGTON SECURITIES COMPANY, a Corporation, Defendant and Appellant,
vs.
UNITED STATES OF AMERICA, Complainant and Appellee.

Names and Addresses of Counsel:

Elmer E. Todd, Esq., U. S. Attorney, Federal Building, Seattle, Washington, Solicitor for Complainant and Appellee.
Chas. P. Spooner, Esq., and H. R. Clise, Esq., Leary Building, Seattle, Washington, Solicitors for Defendant and Appellant.

1 In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Bill of Complaint.

To the Honorable Judges of the United States Circuit Court for the Western District of Washington in Chancery Sitting:

Your orator, the United States of America, by and under the authority of Charles J. Bonaparte, Attorney General of the United States, brings this bill of complaint against the Washington Securities Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and thereupon your orator complains of said defendant and shows unto your honors as follows:—

I.

That the defendant, the Washington Securities Company, is, and ever since the 31st day of March, 1906, has been a corporation organized and existing under and by virtue of the laws of the State of Washington.

II.

Your orator further shows unto your honors that that certain tract of land situated in King County in the Western Judicial
2 District of Washington, and particularly described according to the United States Survey as "Section thirty-four (34) Township twenty-two (22) North of Range Seven (7) East of the Willamette Meridian" in the Seattle land district of the State of Washington, was at all times prior to issuance of the patents hereinafter mentioned a part of the public domain of the United States, and that the complainant was the legal owner, and was and still is the equitable owner in fee simple and entitled to the possession of said section; that at all times hereinafter mentioned said section of land was known mineral land and contained and still contains valuable workable deposits of coal in such quantities and of such character that it was and is more valuable to be mined for its coal than to be used for agricultural purposes, as the patentees hereinafter named well knew at the times they made application to purchase said land under the homestead laws of the United States, and at the times they received their patents to said land, and as said defendant well knew at the time it purchased said land as hereinafter set forth; that the land is now and was at all times herein mentioned wholly unfit for agricultural purposes, and is only valuable by reason of said coal deposits; that said land at all times herein mentioned was subject to entry as coal land in conformity with the laws of the United States, and was not subject to entry under the homestead laws of the United States.

III.

Your orator further shows unto your honors that on the 10th day of September, 1900, one Zachariah Turner filed with the proper officers of the United States land office at the city of Seattle, Washington, an application in writing to enter as a homestead the east one-half (E-½) of the east one-half (E-½) of said Section thirty-four (34) Township twenty-two (22) North of Range seven (7) east of the Willamette Meridian, and at the time of filing said application filed therewith his non-mineral affidavit in accordance with the rules and regulations made and established by the Com-
missioner of the General Land Office of the United States
3 in conformity with the laws of the United States, in which affidavit he alleged among other things that he was well acquainted with the character of said described land, and that there was not to his knowledge within the limits thereof any deposits of coal; that thereafter on the 9th day of January, 1902, said Zachariah Turner desiring to commute his homestead entry upon said east one-half (E-½) of the east one-half (E-½) of Section thirty-four (34) Township twenty-two (22) North of Range seven (7)

East of the Willamette Meridian, made and filed his final proof in writing before said land office, and with his final proof filed the non-mineral affidavit required by the rules and regulations of the Commissioner of the General Land Office in conformity to the laws of the United States; that said Zachariah Turner in his testimony upon final proof before said land office testified upon oath among other things that said land was most valuable for agricultural purposes, and that there was not any indications of coal on it, and in said affidavit he alleged that he was well acquainted with the character of the land and that there was not to his knowledge any deposits of coal within the limits thereof; that said testimony so given and said affidavits and the statements therein contained were false and fraudulent as the said Zachariah Turner well knew at the time of giving said testimony and at the time of making said affidavits, and said false and fraudulent testimony was given, and said false and fraudulent affidavits were made by him for the purpose of fraudulently obtaining from the United States title to said land; that said land contained valuable deposits of coal, and was more valuable to be mined for said coal than to be used for agricultural purposes, and was unfit for agricultural purposes and of no value therefor, all of which said Zachariah Turner well knew; that on the said 9th day of January, 1902, upon said final proof the officers of said Seattle land office through mistake and inadvertence and without authority of law issued to said Zachariah Turner a Receiver's receipt for said land, and thereafter on the 2nd day of November, 1904, patent was issued to him by the United States conveying said land to him, which patent was issued to him through mistake
4 and inadvertence on the part of the officers of the Land Office of the United States and without any authority to issue it.

That on the 10th day of October, 1906, said Zachariah Turner and Mary Turner, his wife by deed conveyed the said land to one C. J. Smith, who was then and there the agent of the defendant for the purchase of said land, and who acquired said land solely for the use and benefit and in trust for said defendant, and who, with his wife, on or about the 10th day of October, 1906, conveyed said land to said defendant, and said defendant still holds the legal title thereof; that said defendant and said C. J. Smith, as its agent, on the 10th day of October, 1906, and for a long time prior thereto well knew that said land contained valuable deposits of coal; that it was mineral land, and was more valuable to mine for said coal than to be used for agricultural purposes, that it was unfit for agricultural purposes and of no value therefor, and not subject to be entered under the homestead laws of the United States.

IV.

Your orator further shows unto your honors, that on the 5th day of August, 1901, one Odin A. Olsen filed with the proper officers of the United States Land Office at the City of Seattle, Washington, an application in writing to enter as a homestead the northwest quarter (NW-¼) of said section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, and at the time of filing said application filed therewith

his non-mineral affidavit in accordance with the rules and regulations made and established by the Commissioner of the General Land Office of the United States in conformity to the laws of the United States, in which affidavit he alleged among other things that he was well acquainted with the character of said described land, and there was not to his knowledge within the limits thereof any deposits of coal; that thereafter on the 6th day of May, 1903, said Odin A. Olsen desiring to commute his homestead entry upon said northwest quarter (NW-¼) of said section thirty-four (34) township twenty-two (22) north of range seven (7) east of the
5 Willamette Meridian, made and filed his final proof in writing before said land office, and with his final proof filed the non-mineral affidavit required by the rules and regulations of the Commissioner of the General Land Office in conformity to the laws of the United States; that said Odin A. Olsen in his testimony upon final proof before said land office testified upon oath among other things that said land was agricultural land and that there was not to his knowledge any indication of coal on it, and in said affidavit he alleged that he was well acquainted with the character of said land, and that there was not to his knowledge any deposits of coal within the limits thereof; that said testimony so given and said affidavits and the statements therein contained were false and fraudulent as the said Odin A. Olsen well knew at the time of giving said testimony and at the time of making said affidavits, and said false and fraudulent testimony was given, and said false and fraudulent affidavits were made by him for the purpose of obtaining from the United States title to said land; that said land contained valuable deposits of coal, and was more valuable to be mined for said coal than to be used for agricultural purposes, and was unfit for agricultural purposes, and of no value therefor, all of which said Odin A. Olsen well knew; that on the said 6th day of May, 1903, upon said final proof the officials of said Seattle land office through mistake and inadvertence and without authority of law issued to said Odin A. Olsen a Receiver's receipt for said land, and thereafter on the 1st day of November, 1904, homestead patent was issued to him by the United States conveying said land to him, which patent was issued through mistake and inadvertence on the part of the officers of the Land Office of the United States, and without any authority to issue it.

That thereafter on the 10th day of February, 1905, said Odin A. Olsen by deed conveyed an undivided half interest in said northwest quarter (NW¼) of section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, to one Thomas G. Spaight, who at the time of acquiring title to said half interest well knew that said land contained valuable
6 deposits of coal, that it was mineral land and more valuable to mine for said coal than to be used for agricultural purposes, that it was unfit for agricultural purposes and of no value therefor, and not subject to be entered under the homestead laws of the United States.

That thereafter on the 24th day of February, 1906, said Thomas G. Spaight and Lizzie Spaight, his wife, and said Odin A. Olsen by

deed conveyed said land to C. J. Smith, who was then and there the agent of the defendant for the purchase of said land and who acquired said land solely for the use and benefit and in trust for said defendant, and he, with his wife, on or about the 10th. day of October, 1906, conveyed said land to said defendant and said defendant still holds the legal title thereof; that said defendant and said C. J. Smith, as its agent, on the 10th day of October, 1906, and for a long time prior thereto well knew that said land contained valuable deposits of coal, that it was mineral land and more valuable to mine for said coal than to be used for agricultural purposes, that it was unfit for agricultural purposes and of no value therefor, and not subject to be entered under the homestead laws of the United States.

V.

Your orator further shows unto your honors that on the 31st day of December, 1902, one Robert L. Barbee filed with the proper officers of the United States land office at the city of Seattle, Washington, an application in writing to enter as a homestead the southwest quarter (SW¼) of said section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, and at the time of filing said application filed therewith his non-mineral affidavit in accordance with the rules and regulations made and established by the Commissioner of the General Land Office of the United States of America in conformity with the laws of the United States, in which affidavit he alleged among other things that he was well acquainted with the character of the said described land, and there was not to his knowledge within the limits thereof any deposits of coal; that thereafter on the 30th day
7 of March, 1904, said Robert L. Barbee desiring to commute his homestead entry upon said southwest quarter (SW¼) of section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, made and filed his final proof in writing before said land office, and with his final proof filed the non-mineral affidavit required by the rules and regulations of the Commissioner of the General Land Office in conformity to the laws of the United States; that said Robert L. Barbee in his testimony upon final proof before the land office testified among other things that said land was farming land, and that there was not to his knowledge any indication of coal on it, and in said affidavit he alleged that he was well acquainted with the character of the land and there was not to his knowledge any deposits of coal within the limits thereof; that said testimony so given and said affidavits and the statements thereon contained were false and fraudulent as the said Robert L. Barbee well knew at the time of giving the said testimony and at the time of making said affidavits, and said false and fraudulent testimony was given and said false and fraudulent affidavits were made by him for the purpose of fraudulently obtaining from the United States title to said land; That said land contained valuable deposits of coal and was more valuable to be mined for said coal than to be used for agricultural purposes, and was unfit for agricultural purposes and of no value therefor, all of

which said Robert L. Barbee well knew; that on said 30th day of March, 1904, the officers of said Seattle land office through mistake and inadvertence and without authority of law issued to said Robert L. Barbee a Receiver's receipt for said land, and thereafter on the 12th day of December, 1904, a homestead patent was issued to him by the United States conveying said land to him, which patent was issued to him through mistake and inadvertence on the part of the officers of the land office of the United States and without any authority at law to issue it.

That on the 10th day of October, 1906, said Robert L. Barbee, and Alice Barbee, his wife, by deed conveyed said land to one C. J. Smith, who was then and there the agent of the defendant for the purchase of said land, and who acquired said land solely for
8 the use and benefit and in trust for said defendant, and who, with his wife, on or about the 10th day of October, 1906, conveyed said land to said defendant, and said defendant still holds the legal title thereof; that said defendant and said C. J. Smith as its agent, on the 10th day of October, 1906, and for a long time prior thereto well knew that said land contained valuable deposits of coal, that it was mineral land, and was more valuable to mine for said coal than to be used for agricultural purposes, that it was unfit for agricultural purposes and of no value therefor, and not subject to be entered under the homestead laws of the United States.

VI.

Your orator further shows unto your honors that on the 20th day of June, 1901, one Thomas B. Forsyth filed with the proper officers of the United States land office at the city of Seattle, Washington, an application in writing to enter as a homestead the west one-half (W½) of the northeast quarter (NE¼) and the west half of the southeast quarter (SE¼) of said section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, and at the time of filing said application filed therewith his non-mineral affidavit in accordance with the rules and regulations made and established by the Commissioner of the General Land Office of the United States in conformity with the laws of the United States, in which affidavit he alleged among other things that he was well acquainted with the character of said described land and that there was not to his knowledge within the limits thereof any deposits of coal; that thereafter on the 25th day of November, 1903, said Thomas B. Forsyth desiring to commute his homestead entry upon said west half (W-½) of the northeast quarter (NE-¼) and the west half (W-½) of the southeast quarter (SE-¼) of said section thirty-four (34) township twenty-two (22) north of range seven (7) east of the Willamette Meridian, made and filed his final proof in writing before said land office, and with his final proof filed the non-mineral affidavit required by the rules and regulations of the Commissioner of the General Land Office in conformity to
9 the laws of the United States; that said Thomas B. Forsyth in his testimony upon final proof before said land office testified upon oath among other things that said land was fit for agri-

cultural purposes and that there was not any indication of coal on it, and in said affidavit he alleged that he was well acqu-inted with the character of the land and that there was not to his knowledge any deposits of coal within the limits thereof; that said testimony was given and said affidavits and the statements therein contained were false and fraudulent as the said Thomas B. Forsyth well knew at the time of giving said testimony and at the time of making said affidavits, and said false and fraudulent testimony was given and said false and fraudulent affidavits were made by him for the purpose of fraudulently obtaining from the United States title to said land; that said land contained valuable deposits of coal and was more valuable to be mined for said coal than to be used for agricultural purposes and was unfit for agricultural purposes and of no value therefor, all of which said Thomas B. Forsyth well knew; that on the 27th day of November, 1903, upon said final proof the officers of the Seattle land office through mistake and inadvertence and without authority of law issued to said Thomas B. Forsyth a Receiver's receipt for said land, and thereafter on the 3rd day of August, 1904, a homestead patent was issued to him by the United States conveying said land to him, which patent was issued to him through mistake and inadvertence on the part of the officers of the land office of the United States, and without any authority to issue it.

That on the 4th day of May, 1906, said Thomas B. Forsyth and Margaret W. Forsyth, his wife, by deed, conveyed said land to one C. J. Smith, who was then and there the agent of the defendant for the purchase of said land, and who acquired said land solely for the use and benefit and in trust for said defendant, and who, with his wife, on or about the 14th day of May, 1906, conveyed said land to said defendant, and said defendant still holds the legal title thereof; that said defendant and said C. J. Smith, as its agent, on the 14th day of May, 1906, and for a long time prior thereto well knew that said land contained valuable deposits of coal, that it was mineral land, and was more valuable to be mined for said coal than to be used for agricultural purposes, that it was unfit for the agricultural purposes and of no value therefor, and not subject to be entered under the homestead laws of the United States.

For as much, therefore, as your orator is without adequate remedy in the premises, except in the court of equity where such matters are properly relievable, and to the end that said defendant, the Washington Securities Company, a corporation, may be required according to the best of its knowledge, information and belief, to make full, true, direct and perfect answer to all and singular the matters hereinbefore contained and alleged as fully and particularly as if the same were here repeated, and that said defendant be distinctly interrogated thereto.

Your orator prays that said patents so erroneously issued from the United States to said Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth may be canceled, annuled, set aside and held for naught, and that said defendant be foreclosed of any interest, right or title that it may have in and to the land described

in said patents, and that it be decreed that the complainant is and was the owner in fee of such lands, and that the pretended title of said defendant be decreed to be void, and that it shall be ordered and decreed to release and convey its pretended title and all interests claimed by it in and to said lands to this complainant, and that complainant may have such other and further relief in the premises as equity may require, and to your honors shall seem meet.

May it please your honors to grant unto your complainant a writ of subpœna in chancery directed to the defendant, the Washington Securities Company, a corporation, commanding it to be and appear before your honors at a day therein named, then and there a full, true, correct and perfect answer to make, (but not under oath, answer under oath being hereby specifically waived), to all and singular the premises, and to stand to, perform and abide by
11 such further order and direction and plea herein as to your honors shall seem meet.

CHARLES J. BONAPARTE,
Attorney General.
ELMER E. TODD,
United States Attorney.

Endorsed: Bill of Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 13, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Answer.

To the Honorable Judges of the United States Circuit Court for the Western District of Washington, in Chancery Sitting:

Comes now the Washington Securities Company, a corporation, defendant in the above entitled cause, now and at all times hereafter saving to itself all and all manner of benefit of exception, or otherwise, that can or may be had or taken, to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

I.

That it admits the allegations of said Paragraph I of said Bill of Complaint.

II.

Answering the allegations of Paragraph II of said Bill of Complaint, it admits that the tract of land described in said Para-
12 graph was at all times prior to the issuance of the patents therefor, a part of the public domain of the United States, but it denies that said *said* complainant was or is the equitable owner in fee simple, or otherwise, of the said tract of land, or is or has been entitled to the possession thereof since the issuance of said patents therefor. It admits that said land contained and still contains valuable workable deposits of coal. Except as hereinbefore expressly admitted, or otherwise denied, this defendant denies each and every allegation, matter, statement and thing contained in said Paragraph II.

III.

Answering the allegations of Paragraph III of said Bill of Complaint, this defendant admits the allegations of said paragraph from the beginning thereof to and including the words "within the limits thereof" in line 21 on page 3 of said Bill of Complaint. This defendant denies each and every allegation, matter, statement and thing contained in said Paragraph III from and including the words "that said testimony" in lines 21 and 22 on page 3 of said Bill of Complaint, to and including the end of said paragraph 3, save and except that it admits that a patent was issued to said Turner for said land, and the same was conveyed by said Turner to one C. J. Smith, as agent for defendant, and said land was conveyed by said Smith to this defendant, who still holds the legal title thereof.

IV.

Answering the allegations of Paragraph IV of said Bill of Complaint, this defendant admits the allegations from the beginning thereof to and including the word "thereof" in line 24 on page 5 of said Bill of Complaint. This defendant denies each and every allegation, matter, statement and thing contained in said paragraph IV from and including the words "that said testimony" in line 24 on page 5 of said Bill of Complaint, to and including the end of said paragraph, save and except that it admits that a patent was issued to said Olsen for the said tract of land described in said paragraph and that an undivided one-half interest therein was conveyed by
13 said Odin A. Olsen to one Thomas G. Spaight, and that all of said land was conveyed by said Spaight and wife and said Olsen to said C. J. Smith, as agent for defendant, and was thereafter conveyed by said Smith to this defendant, who still holds the legal title thereof.

V.

Answering the allegations of paragraph V of said Bill of Complaint, this defendant admits the allegations from the beginning thereof to and including the words "within the limits thereof," in lines 5 and 6 on page 8 of said Bill of Complaint. Denies each and every allegation, matter, statement and thing contained in said paragraph

from and including the words "that said testimony" in line 6 on page 8 of said Bill of Complaint, to and including the end of said paragraph, save and except that it admits that a patent was issued to said Barbee for the land described in said paragraph, and that the same was conveyed by said Robert L. Barbee and wife to said C. J. Smith, as agent for defendant, and said land was conveyed by said C. J. Smith to this defendant, who still holds the legal title thereof.

VI.

Answering the allegations of paragraph VI of said Bill of Complaint, this defendant admits the allegations from the beginning thereof, to and including the words "within the limits thereof" in line 11, page 10 of said Bill of Complaint. Denies each and every allegation, matter, statement and thing contained in said paragraph VI from and including the words "that said testimony" in lines 11 and 12 on page 10 of said Bill of Complaint to and including the end of said paragraph VI, save and except that it admits that a patent was issued to said Forsythe for said land, and that said Thomas B. Forsythe and wife conveyed the land described in said paragraph to said C. J. Smith as agent for defendant, who conveyed the same to this defendant, and that this defendant still holds the legal title thereof.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all of the matters in said Bill of
14 Complaint material to be answered, according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment and decree that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

And for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

BOGLE & SPOONER,
Attorneys for Defendant.

We hereby acknowledge service of the within Answer and the receipt of a true copy thereof, this 4th day of March, 1909.

ELMER E. TODD,
Attorney for Complainant.

Endorsed: Answer. Filed U. S. Circuit Court, Western District of Washington, Mar. 8, 1909. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Replication.

Replication of the United States of America to the Answer of the Above Named Defendant, Washington Securities Company, a Corporation.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereupon sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defend-
15 ants, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly as in and by its said bill it has already prayed.

ELMER E. TODD,
United States Attorney.

Received a copy of the within Replication this 9 day of March, 1909.

BOGLE & SPOONER,
Attorney- for Defendant.

Endorsed: Replication. Filed U. S. Circuit Court Western District of Washington, Mar. 9, 1909. A. Reeves Ayres, Clerk, W. D. Covington, Deputy.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Plaintiff,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

To the Honorable Judges of the Circuit Court of the United States, Western District of Washington, Northern Division, sitting in equity:

I, Roger S. Greene, as United States Master in Chancery for said Western District of Washington, Northern Division, residing at the City of Seattle, King County, Washington, do hereby certify, return and report, that pursuant to an order of the above entitled Court by which it was referred to me as such Master to hear,
16 inquire and report to the Court all matters in evidence, together with all pleadings, files, exhibits, papers and documents whatsoever in the above entitled cause, I designated October 14th, 1909, at my office in the Federal Building, Seattle, King County, Washington, as the time and place for the taking of the testimony and the proofs in said cause, which order is hereunto annexed and returned and filed herewith; that at said time and place Mr. Elmer E. Todd, United States District Attorney, appeared for the plaintiff, and Mr. Charles P. Spooner (of Messrs. Bogle & Spooner), appeared for the defendant, and proceeded with the taking of such testimony and proofs. And that the firm of Bolster, Eaton & Richards, being agreeable to the parties, was by me designated to act as stenographers in said cause, and the members of said firm acting as stenographers in said cause were duly sworn as stenographers to take such proofs and testimony; and thereupon the following witnesses were by me first carefully cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, and that the following depositions were in the following order taken and the following proceedings were had before me in said cause, to-wit:

Mr. TODD: I wish to offer in evidence, as complainant's exhibit "A," a certified copy of the homestead entry of Robert L. Barbee, together with the final proof and other papers, certified by the recorder of the General Land Office at Washington.

The MASTER: Has the other side any objection?

Mr. SPOONER: I object to it as not the best evidence.

The MASTER: Objection overruled.

Mr. SPOONER: Objected to as irrelevant and immaterial and not the best evidence.

The MASTER: Objection overruled.

Papers referred to were marked complainant's exhibit "A," same being returned herewith.

Mr. TODD: I offer in evidence, as complainant's exhibit "B,"

the papers in the homestead entry of Thomas B. Forsyth—
17 the original application and the final proof and the other papers as certified by the recorder of the general land office.

Mr. SPOONER: The same objection.

The MASTER: Objection overruled.

Papers referred to were marked complainant's exhibit "B", same being returned herewith.

Mr. TODD: I offer in evidence, as complainant's exhibit "C", a duly certified copy of the homestead entry of Ordin A. Olsen, including the application and final proof and other papers, properly certified by the recorder of the General Land Office at Washington.

Mr. SPOONER: The same objection.

The MASTER: Objection overruled.

Papers referred to were marked complainant's exhibit "C", same being returned herewith.

Mr. TODD: I offer in evidence, as complainant's exhibit "D", certified copies of the homestead entry of Zachariah Turner, including the application for a homestead and the final proof as certified by the Recorder of the General Land Office at Washington.

Mr. SPOONER: The same objection.

The MASTER: Objection overruled.

Papers referred to were marked complainant's exhibit "D", same being returned herewith.

T. B. COREY, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your full name?

A. T. B. Corey.

Q. What is your profession?

A. Mining man—coal mining man.

Q. How long have you been a coal mining man in this state?

A. About twenty years.

Q. What positions have you held?

A. I was at one time superintendent of the Oregon Improvement Company's mines.

Q. What years were those?

A. It was along in 1889 and 1890, and then I changed to
18 the Pacific Coast and I was superintendent I think until 1897 for the Pacific Coast Company.

Q I ask you if you are familiar with section 34, township 22 north, range 7 east of the Willamette Meridian, situated in this county?

A. I visited that section in September, 1890.

Q. What is the character of that land?

A. As far as timber, or what?

Q. Well, as far as its character, for what is it valuable?

A. Timber and——

Mr. SPOONER (interrupting): It is objected to as irrelevant and immaterial.

The MASTER: Objection overruled.

(Mr. TODD:)

Q. Go ahead, Mr. Corey.
A. Coal land and timber land.
Q. How long have you known that to be coal land?
A. Since 1890.
Q. That is the time you examined it?
A. Yes sir.
Q. At whose request did you examine it?
A. McNeal's.
Q. Who is he?
A. H. W. McNeal. He was resident manager of the Oregon Improvement Company.
Q. Did you make any report upon that examination?

Mr. SPOONER: Objected to as irrelevant and immaterial.
The MASTER: Objection overruled.

A. I did.

(Mr. TODD:)

Q. To whom did you make report?
A. H. W. McNeal.
Q. Who succeded Mr. McNeal as manager of the Oregon Improvement Company?
A. C. J. Smith.
Q. Now, state what you found as an expert, as to the character of that land, from a coal standpoint?

Mr. SPOONER: This is objected to as not the best evidence. His testimony already shows that he made a report on this.
19 The MASTER: Objection overruled.
Mr. SPOONER: Objected to as irrelevant and immaterial.

(Mr. TODD:)

Q. Have you a copy of that report with you?
A. I have.
Q. Please produce it.
A. (Witness produces paper).
Q. Have you made a search for the original of this report?
A. I turned over the original to Mr. McNeal. I kept a copy of it.
Q. Have you made a search for the copy of that report that you made?
A. I have.
Q. Have you been able to find it?
A. I have not.
Q. Is this copy which you show here a true copy of the report which you made to Mr. McNeal?
A. I believe it to be.

Mr. TODD: I offer this report in evidence.
Mr. SPOONER: Objected to as not the best evidence and as irrelevant and immaterial.
The MASTER: Is the original in the hands of the defendant?

Mr. TODD: I don't know where the original is.

The MASTER: What has become of the original?

Mr. TODD: He gave the original—the report is in the form of a letter which was sent to Mr. McNeal, the manager of the Oregon Improvement Company.

The MASTER: The Oregon Improvement Company is not a party to this proceeding.

Mr. TODD: No.

(The MASTER:)

Q. Did you hand this report to some person, or was it sent by mail?

A. I handed a copy of this report to Percy Smith, I think it is.

(Mr. TODD:)

Q. No, the original the judge means.

A. Oh, the original. Oh, I sent that to Mr. McNeal, by letter, if I remember rightly.

20 The MASTER: I do not quite understand, Mr. Todd, to what end you propose——

Mr. TODD: The real reason that I offer this is because Mr. Spooner objected that I did not offer the report. I have not been able to find the original of the report, and this is a copy of it. I do not insist that this go in evidence. I offered this for Mr. Spooner's benefit.

The MASTER: Of course, Mr. Todd, the actual facts as regards the land is one thing, and notice brought home to these parties, which would effect the decision in this case, is quite another thing.

Mr. TODD: Yes.

The MASTER: And I don't know whether you are seeking, by the introduction of this report, or a copy of it, to show what the witness found or to show what knowledge the transferee of the report, or any copy of it, had of the facts.

Mr. TODD: No, simply to show what the witness found. I am simply seeking by this witness to show what he found and ascertained by an examination.

The MASTER: Well, then, I sustain the objection to it.

Mr. TODD: Very well.

(Mr. TODD:)

Q. Mr. Corey, what did you find, from your examination of the land there in 1890?

Mr. SPOONER: Objected to as irrelevant and immaterial.

The MASTER: Objection overruled.

A. Why, I found a tunnel there, if I remember right, 50 feet long, driven in on the vein.

Q. Just describe the character of coal you found?

A. I don't remember the cross section exactly, from memory, but I think there was about six feet of coal and about five inches or so of

dirt mixed in with this coal, with a good roof, and the floor I think was a soft floor.

Q. What work if any had been done upon the section in the way of prospecting or working the vein?

A. This tunnel had been driven. There was also a slope had been driven, but it was full of water, I did not go into that.

21 Q. Do you remember what part of the section the tunnel and slope were on?

A. No, I could not without referring—I think it was the southwest quarter that this tunnel was on.

Q. What kind of coal was it?

A. Bituminous, soft.

Q. What kind of a vein?

A. The vein was six—there was six feet of coal; about five inches and a half of dirt, if I remember aright.

Q. State whether the coal was of such an extent that it would pay to mine it?

A. I considered that it would.

Q. What did you find the land to be valuable for, chiefly?

Mr. SPOONER: This is objected to as incompetent, irrelevant and immaterial. It is a conclusion, nothing else.

Mr. TODD: This man is an expert.

The MASTER: Objection overruled.

A. I considered three fourths of the ground as good coal land, and the whole of it good timber land.

Q. The whole of it good what?

A. Timber land.

Q. How did the coal compare with neighboring mines around there?

A. Well, I drew a comparison, I think, in that letter, in which I considered it better than section 26. That was Kangley.

Q. What is the Kangley mine?

A. That has been abandoned since.

Q. Was it being worked at that time?

A. I think it was.

Q. By what company?

A. By the Northern Pacific or the Northwestern Improvement Company, I don't know which.

Q. Had you known of this section as coal land prior to the time you examined it, had you heard of it as coal land?

A. I had.

Q. For how long?

A. Oh, for probably a year; I don't remember exactly.

22 Q. How generally was that land known as coal land?

Mr. SPOONER: Objected to as irrelevant and immaterial.

The MASTER: Objection overruled.

A. Well, it is pretty hard to answer that question. I think it was generally known, though, as being coal land.

Cross-examination.

(Mr. SPOONER:)

Q. You say that you found a tunnel about 50 feet long?
A. Yes sir.
Q. That has been run there. That was the answer that you gave to his question as to what evidences of prospecting you found there?
A. Yes sir.
Q. Was that the sole evidence of prospecting?
A. I think I went over to the slope and found it full of water, and I could not go in.
Q. That was all there was, was it, at that time?
A. Yes sir, that was all.
Q. But this action, you know, refers to this entire section 34.
A. I don't know what it refers to.
Q. Well, it refers to section 34. In answer to one of Mr. Todd's questions a moment ago—he asked you what proportion of this land was valuable for coal; you said three fourths of it?
A. Yes.
Q. In view of the fact that the only evidences of prospecting that you found were a 50 foot tunnel in one place, and a stope, what is the basis of your statement? that three quarters of the land is valuable for coal?
A. From general information and also from what I saw.
Q. What is the general information?
A. Mr. Williams and Mr. Morgan, who accompanied me at that time—Mr. Morgan was chief mine inspector——
Q. (Interrupting.) When I say I am asking you for general information, you are trying to give me specific statement perhaps of some individuals. I do not want that, I want the general
23 information that you have reference to. Do you know that three fourths of that land is valuable for coal?
A. That was the conclusion that we came to, from talking the matter over.
Q. That is what you mean by general information?
A. Yes. That is I refer to other reports——
Q. (Interrupting.) Did these gentlemen have any better means of information than you did?
A. I think they had.
Q. Were there further evidences of prospecting on the land that they could see that you could not, other than this 50 foot tunnel and the stope you speak of?
A. That I could not say.
Q. Did they mention other evidences of prospecting in talking with you, that you hadn't been able to see, but that they had been able to see?
A. Well, I don't remember of any. I go generally——
Q. (Interrupting.) So far as you know, the only evidences of prospecting on there is, as you have stated to Mr. Todd here, this 50 foot tunnel and the stope?
A. That is right.

Q. You went up there for the purpose of ascertaining, didn't you?
A. Yes.
Q. And so far as you know those were the only evidences that either of these other gentlemen had?
A. They were familiar with it and they said, if I remember aright, that it was useless to go any further than just to see what I did see.
Q. So far as you know, I say, the evidences that you saw of prospecting when you went up there to ascertain the value of this property was the evidence that they had of prospecting, you know of no other prospecting evidences on the property, do you?
A. Only what I have mentioned.
Q. Only what you mentioned?
A. Yes.
24 Q. Is it possible, do you think—reasonably possible to support that statement that three quarters of a section is valuable for coal land when the only evidences of the presence of coal that you saw were this 50 foot tunnel and the stope which was filled with water?
A. Well, it was only—my visit over there was only a preliminary examination to find out——
Q. (Interrupting.) What other examination—you base your answer upon that examination, don't you?
A. Yes.
Q. Well, then, preliminary or otherwise, that is the examination upon which you made the statement that three quarters of the land is valuable for coal purposes, isn't it?
A. That is the conclusion I came to after——
Q. (Interrupting.) That is the conclusion you came to?
A. Yes sir.
Q. What else did you find there to support that conclusion? aside from this prospecting?
A. Nothing only my conversation with these two gentlemen that was with me.
Q. That is all.
A. Yes.
Q. A few moments ago Mr. Todd asked you what proportion of the property was valuable for coal. You said three quarters of it, didn't you?
A. That was the conclusion I came to at that time, yes.
Q. Well, I asked you how much property this suit involved. You said you didn't know, didn't you?
A. No, I don't know.
Q. I asked you if it involved a section and you said you didn't know?
A. I said I don't know how much it involved.
Q. Well then, how do you make the statement that three quarters of it is valuable for coal, if you don't even know how much land he was asking you?
A. He was asking me about this section.
Q. That is what I asked you just now, how much was involved here?

25 A. He asked me about this section. All I know is what I know from what he is asking me there in regard to the amount that is involved. I don't know.

Q. He asked you whether or not it was generally known in the community as coal land?

A. Yes.

Q. And you said "Yes"?

A. Yes.

Q. What did you mean by that?

A. Why, amongst miners, you heard miners talk about it.

Q. How many times have you ever been up there?

A. I never have been on that but the once.

—. ——.

A. No, sir.

Q. Were you interested in any mine in the vicinity?

A. I had charge of the Franklin mine.

Q. Outside of the Franklin mine?

A. No, not personally interested.

Q. The Kangley mine was being worked at that time, was it?

A. Well, now, I could not say positively. I think it was, though.

Q. That adjoins this property, doesn't it?

A. Close to it.

Q. Pretty close to it?

A. Yes sir.

Q. And it has been abandoned?

A. Yes.

Q. How about the Durham mine, which adjoins it or is close to it?

A. Well, that was not being worked either.

Q. That has been abandoned, hasn't it?

A. Practically so, I understand.

Q. You made the statement, in answer to Mr. Todd's question as to what you found in regard to the size of the vein, etc., that it was soft coal seven feet?

A. I think not.

Q. I understood you to say that, or six feet.

A. Six feet.

Q. Six feet?

26 A. Yes.

Q. Don't you mean six inches?

A. No.

Q. Just refresh your memory from looking at that.

A. I take the total there, you see. Six feet five and a half inches of coal and five inches and a half of dirt.

Q. Oh, yes.

A. You see this is the total.

Q. Oh, yes, I see. Without adding the total. As to how far that extended outside of what you saw in the tunnel, you could not state, could you?

A. I could not.

The MASTER: Describe this land as regards it- surface.

Mr. TODD: There will be other witnesses that will go into that

question, who are a good deal more familiar with it than Mr. Corey is, as he only saw it once.

The WITNESS: It is nineteen years ago that I saw it and I could not really describe what the surface is.

(The MASTER:)

Q. What was there about the land that made you think it was not adapted for agriculture?

A. Well, I judge from its roughness. I have not testified in regard to whether it was fit for agricultural purposes—I don't think I have. have.

The MASTER: It probably is involved in some of your answers to the direct examination. That is all.

(Witness excused.)

SAMUEL STARKEY, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. Please state your full name?

A. Samuel Starkey.

Q. Where do you live?

A. Durham.

Q. How long have you lived there?

A. Twenty-two years last August.

Q. How far is Durham from section 34——

A. Adjoins it, sir.

Q. (Continuing:) —in township 22 north, range 7 east of the Willamette Meridian. On which side?

27 A. On the north side.

Q. What is your occupation?

A. A miner, sir.

Q. How long have you been a miner?

A. All my life.

Q. What mines have you worked in in this county?

A. In Newcastle, Black Diamond, Durham, Occidental.

Q. Are you working in any mine at the present time?

A. I am looking after the Durham property. I lived there, just looking after it.

Q. How long have you been looking after it?

A. Since the mine stopped. It is about—oh, it may be seventeen years, sixteen or seventeen years.

Q. Are you familiar with section 34?

A. I have worked on it, sir.

Q. How long have you known that section?

A. Oh, I have known it about—it is twenty-four years since I worked on it, past.

Q. What is the topography of the ground, the character of the ground as to——

A. (Interrupting.) Well, I don't know much about the land, but I know the coal, I worked in the coal.

Q. Well, I mean what is the surface of the land, how is the surface of the land.

A. It is——

Q. (Interrupting.) Level or rough?

A. Oh, it is rough.

Q. How rough?

A. That is, some parts of it is very rough. Why, it is mountain—regular mountain.

Q. What is the name of that mountain?

A. Sugar Loaf, I believe.

Q. How high is that mountain?

A. Oh, it may be five or six hundred feet, maybe more than that.

Q. What part of the section is level?

A. The southeast quarter is pretty level, that is, the most of it.

28 Q. What is the character of the soil on the southeast quarter?

A. Well, I am a very poor judge. For my part I would not, as I told Mr. Smith I would not give ten dollars for anything only for the coal and the timber that was on it.

Q. Is the section still timbered?

A. Well, there is lots of mining timber on it, yes sir.

Q. What do you mean by mining timber, Mr. Starkey?

A. To make posts and laggings and such like.

Q. What are the sizes of the trees?

A. Well, there are some—one foot, some may be a little more, some may be two feet, for anything I know, you know. I have not examined it all.

Q. This Sugar Loaf, is that rocky or otherwise?

A. Well, there is a great deal of gravel in it, and there are some rocks in it, of course.

Q. You say you have worked on that section?

A. Yes sir.

Q. When did you work on it?

A. I worked on it past twenty-four years.

Q. What did you do on it?

A. I worked in the tunnel there, and I helped to put eleven sets of timber, shaping the slope off.

Q. On what part of the section was that tunnel?

A. It is on the southeast quarter.

Q. When was that tunnel put there?

A. Well, I worked on it twenty-four years ago, but there was some work done before I went there.

Q. How far did that tunnel extend in?

A. Well now, I am sure I could not tell you; I didn't measure it.

Q. Well, approximately, Mr. Starkey, I mean?

A. Well, it may be in 50 feet, for anything I know, and may be more and may be less; I could not tell you exactly; I did not measure it.

Q. How far was the coal below the surface?

A. Where we found it?

Q. Yes.

A. Where I worked?

29 Mr. SPOONER: What was that question?

(Mr. TODD:)

Q. How far was the coal below the surface?

A. Well, I think it must be about—it might be 50 feet below the surface, that is, after we got in a piece, you know.

Q. Were there any outcroppings?

A. Yes sir.

Q. Where were those outcroppings on the section?

A. I showed Mr. Smith one.

Q. Well, show us?

A. Well, I could not show you.

Q. Well, I mean tell us, tell us, Mr. Starkey?

A. It is pretty near on the line—on the line of section 3 and section 34, the croppings are.

Q. Now, when did you show them to Mr. Smith?

A. I showed them to him last Thursday. Wasn't it last Thursday, Mr. Smith?

Q. Well, I don't care anything about that. Did you ever show them to him at any prior time?

A. No sir.

Q. What is the character of that land as to being coal land?

A. Well——

Q. (Interrupting.) That section?

A. The coal as we have on Durham—my opinion is that it runs right across——

Mr. SPOONER (interrupting): This is objected to as not responsive to the question, as irrelevant and immaterial. I don't think that is what you are asking.

Mr. TODD: No, that is not what I was after.

(Mr. TODD:)

Q. State whether or not that section is coal land?

A. It is coal land, yes sir.

Q. How long have you known it to be coal land?

A. I have known it to be coal land about, as I tell you, since I worked on it; but I heard before that it was coal, when I went from Newcastle.

Mr. SPOONER: That is objected to as hearsay, and ask that it be stricken out.

30 Mr. TODD: Well, the testimony as to whether land is known coal land is necessarily hearsay testimony, and as to whether a witness has heard it is coal land is necessarily hearsay, but it is competent and relevant. One of the issues in this case is as to whether this land was known coal land.

The MASTER: Objection overruled.

Mr. SPOONER: I want to call the court's attention to this distinction: There is a great difference between the witness being able to testify to a fact, that it is known coal land, and his being able to

testify that he heard it was coal land. He might hear one person say it, or two people, but the other thing is a fact.

The MASTER: Well, he cannot testify as to its being known coal land without something further appears than appears as yet in the testimony. I suppose it is possible for a man to testify that land is known as coal land.

(Mr. TODD:)

Q. Mr. Starkey, how generally was this known to be coal land?

A. Why, I really believe there is not a man living in ten miles of that place but what knew it was coal land at that time.

Q. What do you mean by that time?

A. At the time as I worked on it.

Q. That was how many years ago?

A. Twenty-four years ago past.

Q. How far is Black Diamond from there?

A. Black Diamond I think is about seven miles across right on a direct line.

Q. How far is Franklin from there?

A. About five or six.

Q. How far is Lawson from there?

A. Well, that may be about the same distance.

Q. Lawson had not been opened up at that time, had it?

A. No sir.

Q. Was Black Diamond——

A. (Interrupting.) Let me see. Lawson hadn't been opened up, no sir.

31 Q. The Black Diamond mine was open at that time?

A. Yes sir—that is, they were working there, yes.

Q. For whom did you do the work on this section?

A. I was sent up by Mr. Williams.

Q. Who was Mr. Williams?

A. He used to be superintendent for Newcastle.

Q. Do you remember what year that was?

A. He was not superintendent at that time when he sent me up there to work.

Q. Do you remember what year that was you were sent up there?

A. Let's see, I think it was in 1885, if I recollect right; I ain't sure now, it has been so long, twenty-four years. I have been in Durham a little over twenty-two years and it was two—I think it is about twenty-four years, if I recollect right.

Q. Who went up with you?

A. I went with Degolsworthy, the packer; he used to pack the stuff into 34.

Q. What did you find on that section when you went up there at that time?

A. I found a cabin and some clearing and I found this tunnel was driven in some distance when I went there.

(Mr. TODD:)

Q. Where did you do your work on the section at that time?

A. In the tunnel, and I helped to put in—I think it was eleven sets of timber to form—to shape the slope off.
Q. Did you take any coal out at that time?
A. We had to wheel it out, yes sir.
Q. What did you do with the coal that you took out?
A. Just put it aside there.
Q. How long did you work there at that time?
A. If I recollect right, it was about six weeks.

(Mr. SPOONER:)

Q. How long?
A. About six weeks.

(Mr. SPOONER:)

Q. Weeks?
A. Six weeks, yes sir.

(Mr. TODD:)

Q. Is that the only time you worked there?
A. Yes sir.
32 Q. Is that the only tunnel that has been put on that section?
A. I don't think so, but of course that is the only tunnel I ever worked in.
Q. What?
A. That is the place I worked in.
Q. Well, I say have you ever seen any other tunnels on the section?
A. I have seen some openings on there, yes.
Q. Where?
A. Very near on the—on Barbee's place.
Q. On Barbee's part of it?
A. Barbee's quarter, yes.
Q. What kind of an opening did you see there?
A. Why, it is pretty well filled up, but you can see the coal there.
Q. Do you know when that opening was made?
A. No sir.
Q. When did you first see it there?
A. I saw it when I went up there.
Q. At that time?
A. Yes sir.
Q. Have you ever seen any slopes on that section?
A. Only the one as we shaped.
Q. The one you shaped?
A. Yes sir.
Q. That is the one to which you refer as a tunnel?
A. No, the tunnel was drove in, you see, understand the tunnel was drove in and then we came out from the mouth—to the mouth of the tunnel, you understand, and we started to sink at the mouth of the tunnel.
Q. Oh, I see. It was the same opening?
A. Yes sir.

Q. Do you know Zach Turner?
A. Yes sir.
Q. How long have you known him?
A. Why, I have known him fifteen years, I believe.
Q. Where has he lived during that fifteen years?
33 A. He lived down at a place called Kanasket first, but it was not Kanasket at that time.
Q. How far was that from this section?
A. Oh, it is a little over a mile, a mile and a half maybe.
Q. Where did he live after that time?
A. He lived in a store at Palmer.
Q. How far was that from this section?
A. Two mile and a half.
Q. What did he do at Palmer?
A. He kept a store.
Q. How long?
A. Well, indeed I could not tell you how long he was there.
Q. A number of years?
A. Yes, a number of years.
Q. What other business has he carried on, that you know of?
A. He used to peddle a little—before he had the store, though, this was.
Q. During the past fifteen years he has lived at Kanasket and Palmer then?
A. Yes sir; and then he used to live at Franklin.
Q. When was that?
A. I think before he came—before he came in this little place.
Q. What did he do at Franklin?
A. He worked in the mine and in the store there too.
Q. You have kept up your acquaintance with him since he made the homestead entry on this land?
A. Oh, yes, we have talked it over several times.
Q. Did you ever talk over the character of this land with him, about the time he made the homestead entry?
A. Yes.
Q. What was the nature of your conversation?
A. I told him he would "never get it because" I said, "it is coal land."
Q. Do you know Thomas B. Forsyth?
A. Yes sir.
Q. How long have you known Thomas B. Forsyth?
A. Oh, I have seen him—just before he came up there
34 to take this land up, when he came up there first he came to my house and he told me Charlie Burdette had sent him up there.

Mr. SPOONER: I object as hearsay and irrelevant and immaterial.

Mr. TODD: Anything tending to show that the homestead entryman upon this knew this to be coal land is relevant, and any conversation that they had in regard to it is relevant.

Mr. SPOONER: He is starting to tell what this man told him when he went up there.

Mr. TODD: Well, that is carried out further until——

The Master (interrupting:) Objection overruled.

Mr. Todd While it may not be relevant and material, it gets into the rest of the conversation.

(Mr. Todd:)

Q. Go ahead.

A. Mr. Forsyth came to my house and he told me that Mr. Burdett—Charlie Burdett, from South Prairie, had sent him up to do some work, and he wanted to know if he could board there. I says, "Certainly," I says, "I am awful glad that you are going to do some mining work." And he boarded with me until he fixed the cabin up—the old cabin—he boarded with me until he fixed the cabin up, and then when he left I found that he came up there to homestead it. So I asked him, I says, "Why did you lie to me when you came up and told me you were sent up here to do some work on this property for the coal?" "Why," he says "I told you that," he says, "because if I had told you I was going to homestead it you would not have me to board."

Q. Where did he tell you he was going to do work on the coal, on that section?

A. Section 34.

Q. For whom?

A. He said Charlie Burdett had sent him from South Prairie.

Q. Did he tell you what the work was to be that he was going to do there?

A. Well, he said—well, I understood him to mean that he
35 was going to work—to do some work with the coal mine, he said.

Q. Did you ever have any other conversation with him relative to the character of this land?

A. Oh, when I found out what he was doing, I was done with him.

Q. What was Forsyth's business around there prior to the time that he went upon this homestead?

A. He used to come up there and fish, to fish in Green River, occasionally.

Q. Do you know whether he has ever worked as a miner?

A. Oh, yes.

Q. Where?

A. I believe he worked at South Prairie, Rosyln.

Q. Do you know Ordin A. Olsen?

A. I saw him, yes.

Q. How long have you known him?

A. Oh, I have known him twelve or fifteen years.

Q. What has his business been during that time?

A. Miner. He is a miner.

Q. How near to this section has he lived during the past fifteen years?

A. He lived at Kangley.

Q. At where?

A. He lived at Kangley, he worked at Kangley.

Q. And that is on the section next to this one?

A. Yes sir.

Q. What work did he do at Kangley?
A. He was a miner.
Q. Did you ever have any conversation with him relative to the character of this land, at the time he homesteaded it or prior to the time he——
A. (Interrupting.) Well, he always appeared to be very shy with me.
Q. You never talked to him then?
A. No.
Q. Do you know Thomas Spaight?
A. Thomas Spaight?
36 Q. Do you know Thomas Spaight?
A. I am not acquainted with the gentleman, no sir.
Q. Do you know Robert L. Barbee?
A. Yes sir.
Q. How long have you known him?
A. Oh, I have known him about a year before he came up there to live. I rented him a house at Durham.
Q. Where was he living at that time when you first knew him?
A. At Ravensdale.
Q. What was he doing at Ravensdale?
A. I think he was working in the mine and carpenter on the outside too.
Q. How far is Ravensdale from this section?
A. It is about five miles, I believe.
Q. Did you ever have any conversation with Barbee relative to the coal character of this land?
A. Yes sir.
Q. When was that?
A. When he came up there to live, I tried to pursuade him not to go on it.
Q. What did you tell him?
A. I told him, I says, "Barbee, it is coal land." "Well," he says, "if I can get a filing on it, it will be all right, won't it?"
Q. What did you tell him?
A. "Well," I says, "you will have trouble, sure."

Cross-examination:

(Mr. SPOONER:)

Q. Mr. Starkey, you remember going over this land last week with Mr. —— a part of it with Mr. Smith and myself?
A. Yes sir.
Q. We started in, as I remember it, about the southeast quarter of the section?
A. Yes.
Q. Where the road runs by there?
A. Yes sir. Yes, that is right.
Q. There is a cabin there and quite a good sized clearing, isn't there?
37 A. Yes.
Q. Now, that land where that cabin is, is bottom land, isn't it?

A. Well, it is on the bottom, certainly.
Q. Yes.
A. It is not on a knoll.
Q. No, when I am speaking of bottom land you know what I mean by bottom land, don't you?
A. Yes, I understand.
Q. As we followed up through the woods there, do you remember—did we go through an alder bottom there?
A. That bottom we went through, sir, is on section 3.
Q. Part of it.
A. We went——
Q. (Interrupting.) Part of it on section 34, isn't it?
A. We went pretty near on the line all the way up that road, pretty near on the line, as I told you, I says, "Here," I says, "we are walking on 3."
Q. Do you remember when you and Mr. Smith left us and went off to the left there?
Mr. TODD: To the right?

(Mr. SPOONER:)

Q. To the left?
A. Yes.
Q. Hunting for an outcropping?
A. Yes sir.
Q. That was on section 34, wasn't it?
A. Yes sir.
Q. Well now, part of the alder bottom that we followed up there was on 34 and part of it was on 3; isn't that true?
A. You know where the road was, that road we followed up that hill?
Q. Yes.
A. That is pretty near the line. You see the line run——
Q. (Interrupting:) But that is not all of it on the line, because you went off clear to the left of it in order to get an outcropping on 34?
A. Well, you know the fence, I showed you a line.
38 Q. Yes.
A. Well now, that fence was on the line and we were on the outside of the fence; we didn't walk—we didn't go—after we got away where that corduroy was, you understand—you know where we crossed the corduroy?
Q. Yes.
A. The corduroy was on section 3. Now, that road, when we struck the road after we got across the corduroy, the road where we struck it was on the line of the section.
Q. You remember the second cabin we struck?
A. Yes sir.
Q. We went in under some—there was a trail there running through some bushes, do you remember that?
A. Yes.
Q. And there was a clearing there?
A. Yes sir.

Q. That land that was cleared there was substantially of the same character of the clearing down where the first cabin was, wasn't it?

A. Well, it is swampy and wet, it is not——

Q. (Interrupting.) Comparatively level land—comparatively, I say, level land?

A. Yes, but where the cabin was, as I showed you, after you go up there 200 feet you would find that tunnel and the hill begin to rise.

Q. I am not trying to fight your testimony at all, Mr. Starkey, I simply just want to ask you these questions and have you answer the question I ask. Then, if you want to make any explanation, all right, but I am speaking about the clearing in which that second cabin stands. That is substantially the same kind of land and the land where the first clearing is, isn't it, as far as you know?

A. Well——

Q. As far as you can tell from looking at it?

A. Yes, as far as I know it is.

Q. Now, between the first clearing, down there on the corner of the southeast quarter, between that cabin down there and the second cabin it is not cleared, is it, there were only those two clear-
39 ings there, I mean, but I say between those two cabins and those clearings there is a lot of this timber?

A. Yes, kind of timber—small timber.

Q. Small timber?

A. Yes sir.

Q. And swamp—swampy land?

A. Well, there is not any swamp until you cross the creek.

Q. Now, there is no reason, so far as you know, why that small timber between the first clearing and the second clearing, if taken out of there, would not leave the character of the land—the surface of the land substantially the same as these clearings, it is practically the same stuff, only it is not cleared, isn't it?

A. I don't think this that is on the hill is as good land as this other.

Q. I am speaking now of the shape of the ground, I mean the comparative levelness of it. You haven't struck the steep part of the section yet in there, have you?

A. Well, after you leave that log cabin——

Q. (Interrupting.) I mean leaving it, going down, not up the hill, I am speaking now of the land between the two cabins, the first one we struck and the second one?

A. Oh.

Q. The two clearings?

A. Well, yes, that is pretty level, yes.

Q. Pretty level?

A. Yes sir.

Q. Then we went up over the hill whole you and Mr. Smith were hunting for that outcropping, and you met us up there at a third cabin?

A. Yes sir.

Q. Do you remember that?

A. Yes sir.

Q. There was another clearing, wasn't there?
A. Yes sir.
Q. That land there is substantially level where that clearing is, isn't it?
40 A. There is a bench there but—well, I don't know much about the land, as I told you before.
Q. I am not asking you to tell me about the quality of the soil, but merely as to the shape of it, whether it is comparatively level or not, that is all?
A. Well, there is a level spot there, yes.
Q. Now, do you remember we asked you whether there were any outcroppings and you said yes. You remember you started in to show them to us. Do you remember of it?
A. Yes sir.
Q. Do you remember up that path, in going up that road or path that you speak of, that you hunted up along that path to try and find the outcropping, do you remember kicking in the dirt at different places to try and find it?
A. Yes sir.
Q. And you didn't find it?
A. No.
Q. And then you and Mr. Smith went off down the hill?
A. Yes sir.
Q. And you did find something, didn't you, that had been uncovered?
A. Yes sir.
Q. That was the only place where you found any outcropping that time, wasn't it?
A. Well, that was the easiest place I could show you, and I wanted to take you in the tunnel, but you didn't want to go to it.
Q. You suggested that afterwards, if we didn't want to go further, but I am speaking merely about the outcropping, not the tunnel. As we went up you tried to find outcropping to show us, didn't you, on that road that we went up?
A. Well, I had nothing to do it with only my foot, you know.
Q. You tried to show it?
A. You saw little bits of coal, didn't you, yourself?
Q. I saw coal down on the road, for that matter. Now, let me ask you one or two questions in regard to the reasons why
41 you call this coal land. What do you mean when you say that land is coal land?
A. Why, the coal is under it, that is what I mean by that.
Q. Now, did you hear Mr. Corey's testimony?
A. I was not paying any attention to Mr. Corey.
Q. I didn't ask you how much attention you paid to it, I asked you if you heard it?
A. No, I didn't, really I didn't hear it.
Q. Well then, I will ask you the questions directly: When you went up there twenty-four years ago, or about twenty-four years ago, you found this tunnel there?
A. Yes sir.
Q. Which you say is about 50 feet, as near as you can judge?

A. Yes sir.
Q. And you worked some six weeks on it?
A. Yes sir—six weeks on the section.
Q. On the section?
A. Yes sir.
Q. On the entire section?
A. Yes sir.
Q. That tunnel and the evidence of some little openings are all there were on the ground by which you could see underneath the surface, weren't they—that tunnel and the openings that you speak about, the little openings that you found in a clearing there were all that there was by which you could see underneath the surface, wasn't it?
A. That is all I saw, yes.
Q. That is all you saw?
A. Yes. At that time.
Q. What?
A. At that time, yes.
Q. Well, since that time what other tunnels have you driven?
A. I have not driven anything.
Q. Since that time what other openings have you dug?
A. I have not dug any.
Q. Well then, since that time what other openings have you seen that anybody else has dug?
A. Look here, I haven't been examining it.
42 Q. Well then we get back to the proposition that your statement that that is coal land is based, so far as any knowledge is concerned, upon what you saw in that tunnel, isn't it?
A. That as I saw and that other, because, as I showed you when you were with me—I showed you how the coal laid, didn't I?
Q. You told me. You didn't show me, because I didn't see it.
A. I said, "This is the depth of it—the pitch of it." I said, "This is the strike, it runs pretty near east and west; the strike and the dip is to the north."
Q. Well now, when you say this is known coal land, has been known as coal land——
A. (Interrupting.) Yes sir.
Q. Continuing:) You mean that there is coal on it?
A. Yes, there is certainly good coal.
Q. Do you base that statement that it is coal land on any knowledge of the amount of coal in it, do you know how much coal there is on it?
A. No sir, I don't profess to know.
Q. The reason you call it coal land, then, is because of this prospect that you find on it and because there is other coal land around, that is the reason, isn't it?
A. Why, I tell you the only reason is this: I have worked on it and I have saw it and that is why I say it is coal land.
Q. But you have only worked in that one—it has only been opened up in the place you mention, hasn't it, that tunnel is the only prospect?
A. Them is the places I worked, is all.

Q. Aside from that you don't know, do you?
A. No, I don't know.
Q. Do you consider that you are justified in stating that that is coal land—known coal land, simply because of a 50-foot tunnel that you worked around?
A. Well, you see you must go by the strike and the pitch of the vein, and of course that is all the best men of the United States does.
43 Q. Have you ever met or come in contact with a pitch and strike that was as good as this, that petered out after they——
A. Never, I never did.
Q. You never did?
A. No, sir.
Q. What do you know about the Kangley mine?
A. I don't know anything about the Kangley mine.
Q. How close is it to you?
A. It is a mile, a little over a mile.
Q. Don't you know as much about it as you do about this mine which has never been opened up at all?
A. I know I worked at Kangley myself a little bit.
Q. And how long has it been closed down?
A. Oh, I could not tell you that either.
Q. What?
A. I could not tell you.
Q. Well, it has not been operated for some time, has it?
A. No sir.
Q. You are watching a mine at the present time, aren't you?
A. Yes sir.
Q. Called the Durham?
A. Yes sir.
Q. How much work has been done on that?
A. How much?
Q. How much? Are they working on it now?
A. There is thirteen men working on it right now.
Q. What are they doing now?
A. They are working.
Q. How long have the people who have it, for whom you are working, had it?
A. Oh, I could not tell you that. I know how long I have been there.
Q. Are they turning any coal out of there, are they doing any business with that mine?
A. When they get ready they will turn some out.
Q. That is not what I am asking. I am asking whether they are or not?
A. No sir.
44 Q. No.
A. No.
Q. Do you know the Green River mine, what is known as the Green River mine, in section 8?
A. I know where section 8 is, yes.
Q. Do you know where the Green River mine is?

A. Yes sir.
Q. How far is that from where you are now and from this land?
A. It is about four mile, I guess.
Q. About four miles?
A. Yes.
Q. Do you remember how long ago the Green River mine was opened up?
A. I don't think it ever was opened up.
Q. You don't think it was ever worked at all?
A. I don't think it was ever opened up, no sir. There was some prospecting done on it. Is that what you mean?
Q. I mean prospected.
A. Well, that is a different thing.
Q. Well, you are right about that. Do you remember how much it was prospected, how extensively?
A. No, I can't tell how much work they did there. but they done some work.
Q. They did a good deal of work, didn't they?
A. Well I don't know how much they did do.
Q. Have you ever seen it?
A. I was down where the shaft, but I never was down the shaft. One day I came over after a man they call Blellien. That is not anything about the work. And that is all I know about it. I don't know what was found on section 8 or anything about it.
Q. You know it is not working now, don't you?
A. Yes sir.
Q. Do you know of any homesteads up there in that vicinity——
A. (nterrupting.) I know——
Q. (Interrupting.) Wait a minute. Do you know of any homesteads up there in that vicinity, on which there is any showing of coal?
A. Well——
Q. (Interrupting.) How about section 28?
A. Yes, there is coal on section 28.
Q. That is a homestead, isn't it?
A. I don't think so.
Q. Well, are there any homesteads?
A. Well, I don't know whether there is any homesteads on 28. They are going to open a mine there, so they say.
Q. Well then, to revert to my original question: Are there any homesteads that you know of up there on which there is any coal showing at all?
A. Well, not to my knowledge.
Q. Are there no homesteads up there in that country at all?
A. Yes, there is some homesteads up there, yes.
Q. And are there no homesteads up there in which there is any coal showing at all?
A. If you will just listen, I will tell you the men as I know has homesteads. There is Walters on Kangley——
Q. (Interrupting.) Well, is there any coal on the homestead showing at all?

A. I could not tell you that either. I don't know.
Q. You don't know?
A. No sir.
Q. Well, mention the others?
A. There is Walters and Peter Brown.
Q. Is there any coal showing on his at all?
A. Not as I know of. I never saw any.
Q. Are there any others that have homesteads on which you know of any coal showing?
A. Not as I know.
Q. I want you to answer this question simply from your knowledge, now, not what you think, not what you guess, but what you know: So far as you actually know, is that land any more valuable or as valuable for its coal as it is for the timber on it? I am speaking now of what you know?
46 A. Well, I will tell you, the timber on it would never pay to cut it to ship, that is my opinion.
Q. Now, I want you to bear in mind, in answering this question, that I am asking you about something you have seen there. You have seen the land and the timber and you have also seen this tunnel, 50 feet. Now, so far as you know—your actual knowledge goes, of what there is in the land—not what you think there may be, but what you know there is on the land, could you swear that that land was more valuable for the coal on it than for the timber on it?
A. Well, my opinion is——
Q. (Interrupting.) I am not asking for your opinion.
A. Well——
Q. I am asking, from your knowledge, I am speaking of the fact that you have seen this timber, you have seen the land, the amount of flat land there is in it, such as it is, and you have also seen this opening—the only evidence that you have of the coal there. Now, I am asking you, from what you have seen and what you know, would it be fair and can you conscientiously swear that land is more valuable for its coal than it is for the land itself and the timber on it?
A. Well, I would take——
Q. (Interrupting.) I am not asking what you would take.
A. Well, I will tell you——
Q. (Interrupting.) I am not asking what you would take, I am asking what you know. From what you know, can you swear that.
A. I have told you what I know about it.
Q. Well, can you conscientiously swear that without knowing more about the prospect?
A. I will just leave that to the court to decide. I have told you all I know about it.
Q. This is a matter you can't leave to the court to decide, or anyone else. I am satisfied, from your testimony, and from what I saw of you the other day, that, while you are a very enthusiastic mining man, that you are probably not radical about this prop-

erty or any other, you have mined long enough to know
47 what sources of information are safe to base a judgment about property on, and what are not. Now, I simply want to ask you, from the knowledge that you have, which consists of this opening, this 60 foot tunnel, with the showing there is on it, from that merely, together with your knowledge of the land, that is, what you can see there, with the timber on it, whether or not you believe that you could conscientiously swear, not that you thought, but could conscientiously swear that the land was more valuable for the coal than it was for the land and the timber?

A. Well, I would—now, for me to swear that the coal—my opinion is that the coal runs there and I would be willing to pay coal price for it, under the circumstances and the way it looks.

Q. All right.

A. Yes sir.

Q. Now, I have let you give your opinion.

A. Now, that is just what I would do.

Q. Now, answer my question. Would you be willing to take the responsibility, with the chances there are in regard to these things—you can't ever be absolutely sure—would you be willing, being a conscientious man, to swear, not what you think, what the chances are, but that as a matter of fact the land is more valuable for its coal than it is for its timber and the land? I know what you think, but I am asking you whether you could swear that as a fact—would you want to swear to that, Mr. Starkey?

A. I would be willing to pay coal price for it.

Q. Now, you are answering giving your opinion.

A. I don't wish to answer the question.

Q. All right.

A. I have said—what I have said—I have said as to the coal, is true, and I have worked on it and I know it is there.

Q. You don't want to answer the other question—is that the case?

A. That is the way it is, just the way——

Q. (Interrupting.) You don't wish to answer that question—is that what you say?

48 A. I don't wish to swear that the coal—that the coal is—or land is worth more for coal than anything else, for I don't know what the other is worth; but you see I say the coal.

Q. All right, Mr. Starkey.

A. I told you and Mr. Smith when you were there, I says, "When you got the land you got it dirt cheap."

Mr. SPOONER: Never mind. I think that is all.

Redirect examination.

(Mr. TODD:)

Q. On which quarter section is this clearing that you have spoken of?

A. There are three clearings.

Q. Well, the largest clearing that you spoke of?

A. Why, it is on the southea t quarter.
Q. Do you know which one of these claimants' land it is on?
A. Yes sir.
Q. Which one?
A. Turner's; that is the biggest clearing.
Q. That is where the swamp land is?
A. Well, no, there is not—where the clearing is there is not any swamp land there, is there?
Q. That is Turner's clearing?
A. Yes sir.
Q. How big is that clearing?
A. Well, I could not tell you that either.
Q. Well, is it a large clearing or a small clearing?
A. Oh, it is small.
Q. What is the next clearing, whose is that?
A. Forsyth's.
Q. Is that higher up?
A. Well, he runs up very near to where that other coal is close.
Q. How near to the top of Sugar Loaf?
A. Well, the way he has took his land, he has took it a mile long, you see, and a quarter of a mile wide. So has Turner.
Q. They are both on the east half of the section?
A. Yes sir.
Q. Where is his cabin, towards the middle part of the section?
49 A. Forsyth's?
Q. Yes.
A. It is pretty near—it might be about 200—from two to three hundred feet from the east and west line.
Q. That is on one of the clearings you mention?
A. His house is in about 200 feet of where the tunnel is.
Q. Of the tunnel that you worked on years ago?
A. Yes sir, only the tunnel is west.
Q. How big a clearing is his?
A. Oh, I don't know hardly, it is very small, very small.
Q. And where are the other clearings on the section?
A. Well, Barbee's is way up on the hill; that is on the east. This on the west quarter, Barbee's is.
Q. Is it on the northwest or southwest quarter, do you remember?
A. Southwest quarter I think.
Q. How big a clear is that?
A. He has got a right smart clearing.
Q. And Olsen's clearing, where is that?
A. Olsen is away on the north end, the northwest——
Q. (Interrupting.) How much of a clearing has he got?
A. Oh, there is a little there, I could not tell you how much.
Q. Now, upon what experience and observation do you base your opinion that this is coal land?
A. That is I have worked on it.

Q. I mean as to what you saw and what you know to make you believe that it is coal land?
A. Why, there is that foot wall and the hanging wall, the sand rock; that is all I can give, as coal land.
Q. What experience have you had to base your statements on, what experience in mining?
A. Well, I have always mined in coal.
Q. In that same kind of coal?
A. Well, in different kinds, you know.

(Witness excused.)

An adjournment was here taken until two o'clock this afternoon.

50 Afternoon Proceedings.

OCTOBER 14, 1909.

F. G. SMITHERS, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Mr. TODD:

Q. Please state your full name?
A. F. G. Smithers.
Q. What is your residence?
A. Renton.
Q. How many years have you lived in Renton?
A. About forty-five.
Q. You were born in Renton, were you not?
A. Yes sir.
Q. Are you acquainted with section 34, which has been testified to here?
A. Yes sir.
Q. How long have you been acquainted in that section?
A. I think the first time I was on section 34 was in 1883 or '4.
Q. How often after that?
A. Well, off and on every year up until about twenty years ago.
Q. Were you on all parts of the section?
A. Yes sir.
Q. On all quarters of the section?
A. Yes sir.
Q. What is the character of the surface of the land?
A. Well it is some flat land——

Mr. SPOONER (Interrupting.) Objected to as irrelevant and immaterial.

The MASTER: Objection overruled.

A. There is some flat land and hills and some little canyons—small canyons and swamp on the land.
Q. What part of the section is suitable for agriculture?
A. Some places all over the section you might raise a little on, I would not consider it agriculture land at all.
Q. Why not?

A. Well, there is not enough of it in one body, I don't think, not suitable for agriculture.

Q. What kind of timber has it on it?

51 A. Mostly small timber—coal timber, some cedar and fir.

Q. Is there any hill on it or peak of any kind?

A. Yes sir.

Q. What peak is on it?

A. Sugar Loaf.

Q How high a peak is that?

A Well, I would judge anywhere from three to five hundred feet, something like that; I don't know exactly. I have been on top of it, chasing around it.

Q. When you first went on the section had there been any prospecting there for coal that you know of?

A. Well, when I first went onto it I don't remember seeing any coal on it; there was a cabin there and some clearing there and a stable.

Q. What did you see subsequent to the first time you went on it?

A. Well, I saw one place what they called the slope, and there was a little tunnel down on the creek. I would not know what quarter it was on.

Q. How many tunnels have you seen on that?

A. That is all I ever saw.

Q. Did you ever see any coal taken out of it?

A. I never saw it took out of it. I have seen the coal burned there, is all.

Q. Where did you see the coal burned that was taken from it?

A. In the cabin.

Q. How long ago was that?

A. About twenty years ago, about the last time I was up there, I think.

Q. State whether you know what the general reputation was in that vicinity as to the character of that land.

A. It was considered coal land.

Q. How long ago was that?

A. Well ever since 1884, to my recollection, always considered it coal land.

Q. How far is that from Renton?

52 A. Twenty-three or four miles, I think somewhere along there.

Q. How did you use to get in there at that time?

A. We had an old trail that ran from Renton through North Prairie and Meridian Prairie, and a trail came in from Kent across Meridian Prairie; that is the only way of getting there when I went in there first—no wagon road.

Q. Do you know Zachariah Turner?

A. Yes sir.

Q. How long have you known him?

A. About twenty years.

Q. What has he done since you have known him, what has been his occupation?

A. When I first knew him he was—I think he was—I would not be positive whether he was mining coal at Newcastle or not; he was living there; when I got better acquainted with him he was working in a store at Franklin.

Q. Whose store?

A. The Oregon Improvement Company.

Q. When was that?

A. Well, about nineteen or twenty years ago.

Q. That was at the store at the Franklin mine?

A. Yes sir.

Q. How far is that from this section?

A. Six or eight miles, I should judge.

Q. Could you state how generally this section was known as coal land in that vicinity at that time?

A. Well, generally known.

Q. Well, to what extent, how far around there?

A. Well, Newcastle out there, thirty or forty miles in that direction.

Q. You say you have seen that coal used that was taken out of it?

A. Yes sir.

Q. What kind of coal was it?

A. I don't know what you would call it, but fair burning coal; it burned in an open fire.

53 Cross-examination.

Mr. SPOONER:

Q. Mr. Smithers, how large an earea—just approximately how large an area around in the general vicinity of this section is generally known as coal lands, I mean in that part of King County, not this particular section really, but generally around that vicinity?

A. Well, it is about thirty miles from Newcastle, and I think it is generally known all through there; further up into there, there was no country the other side of there in those days.

Q. What?

A. There was nothing the other side of there, that is, south of there, in those days; there was no mines developed on the other side of Green River, that I knew of—the Franklin, Black Diamond.

Q. In a general way that country, for quite a radius up there, then, has been for a long while known as a coal country?

A. Yes sir.

Q. Do you know of anyone who has any homestead up there in that country at all?

A. No sir, I don't.

Q. You don't know what homesteads there are in that country?

A. No sir, because I have not been in there for eighteen or twenty years.
Q. What relation do you sustain or did you ever sustain to this section 34?
A. Filed on it once.
Q. You filed on it once?
A. Yes sir.
Q. When was that?
A. Well, I ain't positive now whether it was before 1897, or afterwards.
Q. Was it surveyed at the time you filed on it?
A. I think it was.
Q. How many times did you file on it?
A. Filed once.
Q. Once.
A. Yes sir.
54 Q. Did you file on it yourself?
A. I did.
Q. What did you file on, what part of it?
A. I don't remember now.
Q. What?
A. I don't remember what quarter I did file on.
Q. You don't remember what quarter you filed on?
A. No, I don't. It is long ago.
Q. You did not follow up your filing?
A. What?
Q. You did not follow up your filing at all?
A. I don't understand your question.
Q. You did not follow up the filing that you made?
A. No, I didn't.
Q. You let it go?
A. Yes sir.

Redirect examination.

Mr. Todd:

Q. Why did you let the filing go, Mr. Smithers?
A. Well, at the time after a year was up I didn't feel able to file on it.
Q. Why didn't you feel able?
A. Well, financially.
Q. What?
A. Financially.

(Witness excused.)

Daniel Boyle, produced as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows:

Mr. Todd:

Q. Please state your full name?
A. Daniel Boyle.

Q. Where do you live?
A. At Occidental.
Q. How far is that from this section 34?
A. About four miles.
Q. What is your occupation?
A. Well, I used to dig coal. Now I am working in the bunker.
Q. Where did you dig coal?
55 A. I dug coal all over King County and Pierce, in my young days.
Q. How long have you lived in—how many years is that?
A. I have been in King County here and Pierce for thirty-two years—thirty-three years.
Q. Are you acquainted with this section 34?
A. Yes sir, thoroughly.
Q. How long have you been acquainted with it?
A. I have been there—I have been—34—in '81.
Q. What did you do there at that time?
A. Well, I was not doing nothing but just walking over it.
Q. When did you go on it next?
A. In 1883.
Q. What did you do there then?
A. I found some coal in 1883, cropping out.
Q. Then what did you do?
A. Well, about two years afterwards—well, just two years afterwards I drove a tunnel on those veins—helped drive it.
Q. Who were you working for then, yourself?
A. No sir, I was working for the Oregon Improvement Company I think, I am not sure.
Q. On what part of the section did you drive a tunnel?
A. I drove a tunnel on—well, not myself, in company with others.
Q. Yes.
A. We drove two tunnels on the northwest quarter of 34. That was the first work that was done there.
Q. What did you find when you drove those tunnels?
A. Coal.
Q. What kind of coal?
A. The best kind of coal, about the best coal in the country.
Q. How many veins of coal did you find?
A. One. There was only one vein there, but there was—it was opened in two different places.
Q. What other tunnels were driven there to your knowledge on the section besides those on the northwest quarter?
56 A. There was a tunnel drove on the southeast quarter. Then the——
Q. Interrupting.) How long after the tunnels were driven on the northwest quarter was that?
A. About a year afterwards, I guess.
Q. Were you there when that tunnel was driven on the southeast?
A. Yes sir.

Q. What did you find?
A. Coal.
Q. What kind of coal?
A. Well, it was not quite so good as the coal on the north side of the section. It was pretty fair coal.
Q. Did you determine how the veins run there?
A. Yes sir.
Q. How do they run there?
A. They run east and west, partly east and west, a little north of east.
Q. Now, did the tunnel you drove on the southeast quarter run into the same vein as the tunnel which you drove on the northwest quarter?
A. No sir. Pretty near a mile between them.
Q. Pretty near——
A. (Interrupting.) Pretty near a mile. The north vein is away in the north part of the section, and the south vein is on the south part, close to the line.
Q. The general direction of those veins is east and west, you say.
A. Yes, partly east and west.
Q. Were there any other tunnels driven or slopes made on the section?
A. Not in early days. These were the fir-t.
Q. What others have been made since, to your knowledge?
A. Well I have not been on the section now for this last eighteen years. There was quite a good many men worked there afterwards.
Q. How many men worked there in 1883 when you drove the first tunnel?
57 A. There was four of us then.
Q. How many were there the next year when you drove the other tunnel?
A. Well, there was seven or eight of us there then part of the time.
Q. What is the character of the land as to being hilly or flat—of the section?
A. This mountain they call Sugar Loaf is pretty near in the center of the section, it takes in a part of each quarter.
Q. Is this a map which you drew?
A. That I drew?
Q. Yes, did you draw this?
A. No sir.
Q. On what part of the section is there level land?
A. On the east part of the section there is some level land.
Q. Do you know how much there is of level land there?
A. No, I could not swear to it. It is quite a piece there on the east side of the section.
Q. When did you first learn that this was coal land?
A. In 1881.
Q. How general was that known about in that vicinity?

A. Well, it was known by me and another man, we were both walking over it.

Q. How generally known was it after that, if you know?

A. There was nobody in the country then only just a few men that was sent up from Newcastle there to hunt for coal, that the Oregon Improvement sent up there, and there was nobody in the country only just a few men that were sent up there.

Q. When were the other mines opened up in that vicinity?

A. I guess Franklin was the next. No, Black Diamond was the next, the first mine that was opened up there. That was opened, I guess, about twenty-five years ago.

Q. That would be just shortly after you drove that fir-t tunnel then?

58 A. Yes, shortly after, yes. They were prospecting at the Diamond in 1881.

Q. When were you last on this section, do you remember?

A. On 34?

Q. Yes.

A. I was not there for eighteen years.

Q. Well, at the time you were there last how generally known was it throughout that vicinity that this was coal land?

A. Well, everybody knew it then—long before that, everybody that was up there, all the old settlers.

Q. How many mines are there in that vicinity that were operating?

A. Now?

Q. About 1890?

A. 1890?

Q. Yes, or about eighteen years ago when you were last on that land?

A. Why, there was a whole lot of mines there.

Q. Do you mean to say it was generally known among the mining men up there that this was a coal section?

A. Yes sir.

Q. What mines have you worked in up there?

A. I have worked in a mine called Durham and I have worked in a mine called Kangley and I worked in the Occidental and I worked in Green River coal mine and the Sunset coal mine. I have worked in them all pretty near.

Q. The Occidental is at Palmer?

A. No, it is below Palmer a mile, one mile below Palmer.

Q. That is where you are working now?

A. Yes sir, I am working outside in the bunker.

Q. Did you ever know Zach Turner?

A. Yes, I am thoroughly acquainted with him.

Q. Where did you know him?

A. I knew him first at the Franklin, clerking in the store, about twenty-five years ago.

Q. Where else did he work besides the Franklin store?

A. Well, he was doing business that time for the Oregon

59 Improvement Company, and then he started a store himself afterwards at Palmer, of his own.

Q. How far is Palmer from this section, section 34?
A. About three mile-.
Q. How long did he run the store at Palmer?
A. Well, about ten or twelve years, more or less.
Q. Did you know James B. Forsyth?
A. Yes sir.
Q. Where did he work up there?
A. He didn't work any up there, that I know of. He worked at South Prairie.
Q. At the South Prairie mine?
A. Yes sir.
Q. How long did he work there?
A. I could not tell you, sir.
Q. Did you ever know him up in the vicinity—living in the vicinity of this section?
A. Yes sir.
Q. Where did he live?
A. When I knew him up there he was living on the section.
Q. What year was that?
A. I could not tell you the year, sir, but——
Q. (Interrupting.) I mean about how long ago?
A. About eight or nine years.
Q. Ago?
A. Yes sir—I think.
Q. Well, did you ever know him living in that vicinity before he lived on this section?
A. No sir.
Q. Did you know Robert L. Barbee?
A. Yes sir.
Q. Where did you know him?
A. I never knowed him until I knowed him on the section.
Q. Did you know Ordin A. Olsen?
A. That is a man I never knowed.
Q. Have you been on the section since these men lived there?
A. No sir.
60 Q. But you knew them, knew they were living on the section?
A. Yes, I knew they were living on the section.
Q. Did you ever have any conversation with them in regard to the coal character of the land?
A. Well, no. Well, let's see—had a talk with Turner several times about his place, but the others I didn't bother talking to.
Q. What was the talk with Turner?
A. Well, talking with him about the piece of good land he had and what he had cleared, one thing or another.
Q. I mean did you talk about the coal character of it?
A. We did not talk much about the coal.
Q. What is the character of the timber on this section?
A. Timber? Don't amount to anything only just a little piece on the northwest quarter.
Q. Well, could you state with regard to the agricultural land on

the section? I think I asked you that before, probably. Did you state whether the land is suitable for agriculture or not?

A. No, there is a piece on the east side of the section, of pretty fair land, but the rest of it don't amount to much.

Cross-examination.

(Mr. SPOONER:)

Q. You gave a list of the mines that you were working in at different times eighteen years ago. What were those mines again, just mention them slowly?

A. What I am working now?

Q. No, you said you were working in mines since eighteen years ago when you were first on that—or the last time you were on the section. What mines have you worked in?

A. Well, Durham was the first mine after I worked Sugar Loaf.

Q. Is the Durham mine being operated now?

A. No sir, not for several years.

Q. What was the next one?

A. Kangley.

Q. Is that being operated now?

A. No sir, not for several years.

61 Q. And what was the next one after that, that you worked in?

A. Sunset.

Q. Is that being operated now?

A. Well, it has been idle for a short time. It is starting up again.

Q. And what was the next one—Green River—you spoke of Green River?

A. Green River, yes.

Q. Is that being operated?

Q. Yes, right along.

Q. Are you sure about that? Mr. Starkey said it was not being operated?

A. Yes, that is one of the best mines they have go- up there—Green River mine. I will explain it to you. There was a man named Nolte used to run this mine, and there was an Alaskan company bought it about six months ago and he gave it the name of Green River mine.

Q. Is that the Green River mine you have reference to?

A. Yes sir.

Q. I was thinking of the old Green River mine on section 8.

A. And there never was a mine there, just prospect holes. I worked there myself for years. Never was a mine there, sir.

Q. There is coal there, though, isn't there?

A. Yes, there is coal there, yes sir.

Q. How much work was done there?

A. Oh, there was quite a little. I could not exactly tell you how much.

Q. How much of a tunnel was there?

A. Well, there was sinking slopes and drifts, and they worked

there *and they worked there* a good many years trying to find the coal. They did find coal, but it didn't amount to anything.

Q. What sized vein *do* they find there, do you remember?

A. Well, there is three or four veins there, different sizes.

Q. How large were they?

A. Well, I guess the largest one was about five or six feet, and the smallest one was about two feet and a half.

62 Q. How far in on it did they go—on the vein, do you remember?

A. They did not drive much of a tunnel there——

Q. (Interrupting.) They did a lot more work there than they did on 34—than was done on 34?

A. Yes sir, lots more—they spent more money there, but they didn't find near as good coal.

Q. And they didn't develop it at all?

A. No, never.

Q. Whereabouts is the tunnel that you speak of on the southeast quarter, whereabouts with reference to that cabin, or where was it when you were last down there eighteen years ago?

A. It was on the—it was drove on the east quarter, on the west forty, the west forty of the east quarter.

Q. The east forty?

A. No, on the west forty, the east quarter.

Q. Well, that is right near the corner then?

A. Yes, near the half mile post.

Q. How long since you have been on there?

A. About eighteen years ago since I have been on Sugar Loaf.

Q. You don't know whether there is any evidence there of a tunnel now, or not?

A. No sir, I don't.

Q. How much of a tunnel was it?

A. Oh, it was—the tunnel, I could not say how long it was, exactly, but it was quite a piece.

Q. It was not as long a tunnel as the other one?

A. No.

Q. The other was about 50 feet?

A. The other one is more than 50 feet.

Q. Well, I am simply quoting Mr. Corey and Mr. Starkey; they said it was about 50 feet. That is wrong, is it?

A. It is longer than that.

Q. You say that when you went up there and drove the tunnel you were working for the Oregon Improvement Company.

63 You say you think so. Why did you state you were working for the Oregon Improvement Company?

A. We were sent there by the Oregon Improvement Company, from Newcastle.

Q. How do you know you were?

A. Mr. Williams sent me there.

Q. Did Mr. Williams tell you that the Oregon Improvement Company was sending you there?

A. Yes—no, he didn't.

Q. How do you know it?
A. Well, they paid us.
Q. How do you know they paid you?
A. Well, I could not swear to it. We thought our money was coming from them.
Q. But you didn't know who sent you up there, did you?
A. Well, Mr. Williams sent me up there.
Q. Mr. Williams sent you up there, but you don't know that the Oregon Improvement Company sent you up there, do you?
A. No, I could not swear to it. He is superintendent.
Q. You say it is coal land. What do you mean by coal land, land on which there is coal?
A. Any land that has lots of coal on is coal land, I should think.
Q. Any land that is what?
A. That there is lots of coal on it.
Q. How do you know how much coal there is on this land?
A. Well, I have seen quite a bit of coal there myself.
Q. You have seen two tunnels, one 50 feet, or about that, and one less. Have you seen anything else?
A. No, not in early days I didn't.
Q. Well, how do you know how much coal there is on that land?
A. There is a good bit of coal in those two veins.
Q. What?
A. There is a whole lot of coal on them two veins.
Q. Do you know how far those two veins go?
64 A. I could not swear to it.
Q. You don't know how much coal there is on there. You think you know, but you don't know, do you?
A. Well, no, I could not swear to it.
Q. Well, don't say or try to say. Would you say it was more valuable for coal land than for any other purpose?
A. Of course I would.
Q. Why would you say that?
A. Well, I have got my own opinion.
Q. I know, but why would you say that, if you don't know how much coal there is on it?
A. Well, I don't know how much coal there is on it.
Q. You know how much timber there is on it, don't you?
A. The timber don't amount to anything.
Q. I understand you to say that before. But you know how much there is on it, don't you?
A. Yes, pretty near.
Q. In answer to a question of Mr. Todd's a moment ago, you said that the timber didn't amount to anything except on the northwest quarter?
A. Yes——
Q. (Interrupting.) Listen a minute. You say on the northwest quarter. The northeast quarter a large part of that hill is on. Do you want to tell the court that that hill is not covered with timber all over it?
A. No sir.

Q. It is not covered with timber?
A. No sir, there is no timber on the hill at all.
Q. No timber on the hill at all?
A. No, it is nothing but rocks on top of the hill.
Q. Are you sure you remember these quarters correctly? I ask you this because I saw this only last week. Now, just be candid.
A. On the top of the hill is no timber.
Q. Does not this hill run up so that the top part of it is in the south part of the northeast quarter of the section? Is not the whole slope of the hill clear up to the top of it covered with
65 timber in the northeast quarter and in the north half of the southeast quarter?
A. Can I explain myself?
Q. Certainly.
A. Well, the second growth timber they don't call it worth anything, not that timber.
Q. I am not asking how much it is worth, I am asking the question of fact whether there is timber on those quarters or not?
A. Well, small second growth timber.
Q. I didn't ask you what kind. You said it was timber merely on the northwest quarter?
A. Yes—good bunch of timber there on the northwest quarter.
Q. There is timber on the northeast quarter too, isn't there?
A. Yes, timber, but it is small.
Q. But it is timber?
A. It is timber, yes.
Q. And it is thickly timbered down there, isn't it, except where those clearings are made, isn't it, on the side of that hill?
A. Yes.
Q. You say that at that time—well, in 1881 you say that only you and another man knew anything about the coal on there so far as you knew, but that about eighteen years ago everyone around there knew that it was coal land?
A. Yes.
Q. Who else was there eighteen years ago, and where were they? It was not all settled up; it is not all settled up yet. How many active mines were there and how many people were there and where were they located around there eighteen years ago?
A. Well, there was Kangley and Durham—Kangley and Durham, that was two mines that was working in them days up there.
Q. What else?
A. That is the only mines that were opened right there, is Kangley and Durham—close to 34.
66 Q. Isn't it a fact that these tunnels that you drove in there simply disclosed a prospect, they made merely a coal prospect out of that, as to what there is in there nobody could tell, could he, without going in on it?
A. Well, I put out over 60 ton of coal myself on one of the prospect holes.
Q. You did what?

A. I dug over 60 ton, myself—that is, myself and another man wheeled it out with a wheelbarrow.
Q. 60 tons?
A. Yes sir.
Q. How long were you working there at the time you did that?
A. That was about—that I guess was in 1886.
Q. How long were you there working in 1886?
A. Oh, I have been there off and on ever since 1881.
Q. No, I am speaking about the time you said you took the 60 tons out of there in 1886?
A. Yes.
Q. How long were you there? Did you mean that you took this 60 tons out in the year 1886?
A. Yes sir.
Q. And how long were you working there in 1886, about?
A. Oh, I could not tell you; we were several months there working.
Q. You were?
A. Yes.
Q. And where did the coal go?
A. There in a pile. It is there yet, I guess.
Q. But simply coal that you took out of there——
A. (Interrupting.) Yes sir.
Q. (Continuing:) —in driving the tunnel, you mean?
A. Yes; wheeled out with a wheelbarrow and dumped outside, and it is there yet, part of it.
Q. You mean coal and dirt together?
A. Coal and dirt together?
Q. Yes.
A. Well, it was good coal.

(Witness excused.)

67 SIDNEY J. WILLIAMS, produced as a witness on behalf of Plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your full name?
A. Sidney J. Williams.
Q. Where do you live?
A. Renton.
Q. Where were you born?
A. Renton.
Q. What position did your father occupy?
A. He was superintendent at Newcastle for some years prior to 1883.
Q. For the Oregon Improvement Company?
A. Yes sir.
Q. What profession do you follow?
A. Attorney-at-law.
Q. Have you ever been upon section 34 mentioned here?
A. I have.

Q. When were you first there?

A. I went there about—I think it was about twenty-two years ago, twenty or twenty-two years ago; I don't remember exactly.

Q. How often were you there since that time?

A. I was there practically every summer up until the last—for every year up to the last four or five years and I have only been there twice in the last four or five years.

Q. Just state what the character of the land is there on the section?

A. The general character is rough, with three or four openings or clearings on it. Some bottom land, swamp.

Q. Which side of the section is the bottom land?

A. It is on the west side, the west half of the northeast quarter.

Q. The west half of the northeast——

A. (Interrupting.) Part of that.

Q. What is the character of the timber on the section?

A. Why, it is timber that is generally suitable for mining timber, small timber, some alder, vine maple, fir, cedar.

68 Q. Did you ever make any inspection to determine whether the land had coal on it or not?

A. Yes, I have been in the tunnels that were made there.

Q. How many tunnels were there on the section?

A. Two tunnels and one extension or projections of a tunnel, and slope.

Q. Where were those, the tunnels and slope?

A. One was on the—I think it is the west half of the northeast quarter, in that vicinity, right on the line of section 33 the tunnel went in.

Q. Where were the others?

A. The other was on the far end, the opposite end of the section from there. I don't remember just exactly what quarter it was.

Q. Did you ever see any coal taken out of there?

A. I have.

Q. What was the character of that coal?

A. Well, it was a soft coal, bituminous coal.

Q. Well, state whether it was of good or bad quality?

A. Good coal.

Mr. SPOONER: Objected to as incompetent.

A. Good coal.

Mr. SPOONER: Judge Green, I objected to that question as incompetent, and Mr. Williams is a lawyer who has been up on this section quite a number of times, and Mr. Todd is asking what quality the coal was.

The WITNESS: Mr. Spooner, I did not intend——

Mr. SPOONER (interrupting): I object as incompetent.

The WITNESS (continuing): To answer over your objection.

Mr. SPOONER: I know you didn't. It does not make a particle of difference, it is not a jury case.

Mr. TODD: I should have qualified him.

The MASTER: He should show his qualification as an expert.

Mr. TODD: I will withdraw the question, for that matter. I may prove it by other witnesses.

(Mr. TODD:)

Q. Were you up there after these homestead entrymen made their entries on the land?

69 A. Yes sir.

Q. Which of them did you meet up there, if any?

A. Forsythe.

Q. With whom did you go up on the land?

A. Julius Clinker.

Q. When was that?

A. I think it was about seven or eight years ago; I don't remember exactly when it was.

Q. Was it before or after they made their final proof?

A. Before they made their final proof.

Q. How long after the time they had made application—their entry upon it?

A. Immediately.

Q. What part of the section were you on when you met Forsythe?

A. I think I was on the west half of the northeast quarter.

Q. Is that his part of the section?

A. His is the west half of the northeast quarter and the west half of the southeast quarter.

Q. Did you meet any of the other entrymen at that time?

A. I did not.

Q. What took place?

A. Why, I went on to go on to the tunnel and I met Mr. Forsythe and he told me not to come any further, and I told him I was going to the tunnel. He says, "You can't go to the tunnel," he says, "if you go any further I will shoot you." He had a gun in his hand at the time, and I kept on walking towards him, and he told me not to come any further, he would shoot me. So then I went back off the section.

Q. Did you tell him for what purpose you wanted to go on the land?

A. I came there to go where the coal was, the tunnel.

Q. Did he say anything about the coal?

A. He told me he would not let me go there.

Q. Did you at any other time meet any of the other entrymen there?

A. No, I never met any of the other entrymen. I knew Mr. Turner, I knew him well, but I never met him on the section.

70 Q. How long have you known Mr. Turner?

A. Twenty years.

Q. What has been his business during that time?

A. He was first clerk in the store at Franklin, when I first knew him, and afterwards ran a store at Palmer.

Q. How near are those places to this section?

A. About six miles. It is about four miles in a direct line from

Franklin to the section. It is about four miles from Palmer, about six miles from Franklin, to the section, by trail.

Q. For whom was he working at Franklin?

A. Working for the Oregon Improvement Company.

Q. The Oregon Improvement Company is a company that owned various mines around there?

A. Yes, at that time.

Q. For whom was he working at Palmer?

A. Himself, he had a store there.

Q. Was there a mine at Palmer, or near there?

A. There is a mine at Occidental, near there.

Q. Did you know any of the rest of these other entrymen?

A. No, I only knew Mr. Forsythe and Mr. Turner.

—. Did you know Mr. Forsythe prior to the time you met——

A. (Interrupting:) Yes.

Q. Do you know where he worked?

A. He worked in South Prairie. That is the Burnet mine. It is near South Prairie.

Q. Do you know in what capacity?

A. He worked there as a miner.

Cross-examination.

(Mr. Spooner:)

Q. You filed on this land, did you not?

A. Yes sir.

Q. On what portion of it?

A. I don't remember the technical description that I filed on.

Q. Was it on a quarter section?

A. Yes sir. I think, if I remember exactly, it was the same—part of the same that Mr. Forsyth filed on, that is, it was the part that the tunnel was on that I filed on.

71 Q. That is the part that the——

A. (Interrupting.) The——

Q. (Continuing:) —first tunnel that you mentioned is on?

A. Yes; where that slope is also.

Q. The northwest quarter, I think.

A. Yes.

Q. Did you file on that quarter section alone?

A. Yes sir.

Q. Well, I don't mean were you alone in filing on that particular quarter section.

A. Yes sir.

Q. But did you file on that quarter section while others were filing in conjunction with you, filing on other quarters on that section?

A. When I made the filing and made the tender of the money, I filed alone at that time.

Q. What year was that?

A. I don't remember the year. It was about——

Q. (Interrupting:) '96 or '7?

A. I think it was, about; I don't know; the records show the filing. I don't remember.

Q. It was shortly after the land was surveyed, wasn't it?

A. I don't remember just exactly when it was, but the record shows. I made my filing and I made my tender of the money to the office here.

Q. Any way you filed on it before—what was the condition, at what stage were these homesteaders in when you filed?

A. They had just filed.

Q. They had just filed?

A. They had filed on it also, but hadn't made their final proof.

Q. Did you keep your filing good?

A. Yes sir, I made a tender of the $3,200 to the Land Office.

Q. Then you contested their filing, did you?

A. No, it didn't go any further. They refused to accept my money, the Land Office here it was more valuable for other purposes, and gave me back my money.

Q. And what, if any, showing did you make to substantiate your filing?

72 A. I made the same talk I have made here about the coal being there.

Q. In what way did you make that showing?

A. I had witnesses.

Q. That was before the office here?

A. Yes sir.

Q. And, as the result of that showing, they refused to accept your tender?

A. Returned——

Q. (Interrupting.) And turned down your filing?

A. Yes sir.

Q. Was there anybody else at that time filing on the other——

A. I don't remember.

Q. (Continuing:) —quarters?

A. I don't remember whether there was anyone at that time or not, I am not positive.

Q. Was there anyone that appeared to contest or make the same sort of contest on behalf of filings on these other quarters and against these homesteaders?

A. I don't remember.

Q. It was Forsyth who was the homesteader against whom your contest was?

A. I think that was part of his.

Q. Is it a fact, or not, Mr. Williams, that you have in contemplation, in the event that the Government is successful in setting aside this title, refiling on this land?

A. No sir.

A. No?

A. No sir. I can't refile.

Q. You feel quite clear about that, suppose it were thrown open?

A. No sir.

Q. Suppose it were thrown back as——

A. (Interrupting.) No sir.
Q. (Continuing:) —decided to be coal land?
A. I have never thought anything about the matter.
Q. You have never given that any consideration at all?
A. No sir.
Q. Do you represent anyone who has?
73 A. No sir.
Q. I understood you to say that—about some of the swampy land, the wet land in the northeast quarter?
A. No, I didn't, I said the general condition of the land, some was rocky and other was swampy and other was good land.
Q. From a superficial view of it—I am not speaking from the standpoint of a coal miner who has prospected it, but from a mere superficial view, such as I had, for example, in going over it last week, is there anything to indicate, merely on the surface,—is there anything to indicate that quite a large percentage of the land cannot be cleared, in addition to what is already cleared, and it be used for agricultural purposes and the timber utilized for whatever purpose such timber could be utilized for—I say simply superficially?
A. Well, I don't think I can answer your question except in this way, that any man that has ever been in that country—in that coal belt there, and been around those coal mines and been there, would know that it was coal land.
Q. Would you say, Mr. Williams, that aside from the fact that because there was coal land around it that there was a good chance that there would be coal in it—you would not say that from merely looking at the land, without ever going into it, that it was coal land?
A. I would, for this reason: I might be—well, here is the situation: I have been going up on that section ever since I was about nine years old.
Q. But, anyhow, you have a special knowledge of it?
A. Yes, and I have been going into those tunnels and seen the croppings all over it, so naturally when I go there all I can see is coal.
Q. That is true. Try to put yourself in the place of a man who had not——
A. Well, if a man——
Q. (Continuing:) —the knowledge that you have, or any knowledge whatever about it, and who goes on that property, as I say, for instance, as I did.
A. Well, of course you went up there with the idea of not finding coal.
Q. No, don't take me as an example; that might be true.
74 But I am asking you—I simply used myself as an example, there is no point to that, leave me out of it—but take a man, take any man here, take Judge Green, for instance, and assume that he knows nothing whatever about any previous history of this land, does not happen to stumble on the points where these tunnels are or have been, but just simply goes on the land?
A. And sees it.
Q. Would you say that there was anything about the land which

makes it inherently unfit for agricultural purposes, and the timber absolutely useless for anything except mining?

A. Yes sir, I would.

Q. What is it?

A. Why, in the first place, the Sugar Loaf mountain is a big mountain that touches toward all quarters of it, it rises practically in the center of it; and, except where the creek runs, there is not any large amount of good land, the land is rough and rocky, going up the side of the mountain, up the trail to the last cabin that you spoke of; the timber is small and there is timber that is known as mining timber, that is it would be props, lagging and timbers across——

Q. (Interrupting.) It is known as mining timber, isn't it, because it happens to be in a mining country?

A. No, not necessarily.

Q. It would not be called mining timber, if it was somewhere else?

A. Well, at any place in this county or this——

Q. (Interrupting.) Supposing it were away from a mining country altogether, could not it be utilized for ties or for poles of any kind?

A. Oh, it could be used for poles and ties, yes sir.

Q. It is called mining timber simply because it happened to be situated in a mining belt, so that it naturally takes its name from that?

A. That is the only purpose for which it is used in this county, except for ties and for poles; it is used for ties and poles.

Q. But the poles made out of it don't have to be used for
75 mining?

A. Well——

Q. Any use to which poles are put, it could be put to, couldn't it?

A. Practically all of it is second growth, except on one part of it there is some good timber.

Q. How long ago were you up there?

A. I was up there last year.

Q. I want to ask you——

A. (Interrupting.) I was up there this year.

Q. I want to ask you some questions that I put to Mr. Starkey. In the southeast quarter of the southeast quarter is the first clearing that you come to?

A. That is right by the railroad.

Q. That is right—yes, that is close to the railroad.

A. Yes.

Q. There is a wagon road?

A. Yes sir.

Q. An old wagon road that crosses right at that corner?

A. Yes sir.

Q. That is the natural place to start from in going onto it?

A. Yes, you go on that way or from the other side of the section.

Q. Well, I suppose you can. That is the place that Starkey walked up from Durham?

A. Yes sir.

Q. Up from the track. There is a cabin and a clearing?

A. Yes sir.

Q. Between that clearing and the next clearing the land is not cleared, there is a strip of timber in there?

A. Yes sir.

Q. I don't know just how wide it is, because we went around it.

A. It is about——

Q. (Interrupting.) We went around it in going up the hill, to get to this second clearing?

A. Yes sir.

Q. Now, that land, as far as I could see, that is practically similar in between these two clearings to what it is where either
76 one of them is; that is, if that were cleared out in between there, there would be a stretch between the two clearings that ran together and it would be substantially the same kind of land?

A. There is about 200 feet from that clearing to the foot of the hill, if you go in a direct line.

Q. The second clearing, you call the second clearing on the hill?

A. No, I mean begin from the old log cabin there where you went in to the foot of the hill?

Q. That is the first clearing you are speaking of now?

A. No, not counting the first clearing, but from the first clearing it is about 200 feet; if you follow the road down, go on 34, you get on a different section entirely.

Q. I didn't see a second clearing in there, it must have been on the southwest——

A. (Interrupting.) That is where the second cabin is.

Q. Yes, the clearing itself is over 200 feet in diameter, and yet there is a distance from which the timber has not yet been taken, there is land between that clearing and the first clearing, so that it must be over 200 feet from the first clearing to the foot of the mountain?

A. That would be my idea how far it is until you start to go up the hill, if you go in a direct line. If you follow the old road around to that other clearing, of course, it is much further; but walk overland to the land on which the old log cabin is.

Q. The third clearing up there—the third clearing, up on the northwest quarter, that is the one right on top of the hill, on top of the hill?

A. Yes sir.

Q. That one is about as large as the others, it is larger than the second one and about as large as the first one, I should judge, isn't it?

A. Well, I don't—Well, it is pretty near as large as the first one.

Q. And I went into that, saw there was ground all around there with timber on it, which, if the timber was cleared, would add just that much comparatively level area to it?

77 A. Oh, it is not over a hundred feet from that cabin, maybe one hundred and fifty, until you go right straight down the mountain again, from the last cabin.

Q. Well, in some direction it may be true, but there was——
A. (Interrupting.) It is right on the peak of the mountain, of Sugar Loaf.
Q. There is more than 150 feet of cleared land right there?
A. I mean that you would travel to where the tunnel is, it is about 150 feet until you commence to go right down.
Q. Do you know anything about the homesteads that exist up there in that country, do you happen to know men who have taken up homesteads out there?
A. No sir.
Q. Other than these men here?
A. No sir, I don't know of any homesteads there except one further up, about five miles above there. I know one homestead.
Q. You don't know that there are not other homesteads up there?
A. No sir.
Q. But you simply don't know whether there are or not?
A. I don't know the names of any except——
Q. (Interrupting.) I assume you are in the same position that Mr. Boyle admitted he was, and Mr. Starkey, in regard to how valuable this section is for coal purposes, namely, that what you have seen in that 50 foot tunnel is substantially all that you have upon which to base your actual knowledge of what coal there is in it?
A. Well, I would base my knowledge of how much coal there is in it—the dip of the veins there, the quality of that coal as compared to other coals here, that I know of, and if it would continue as it is there the amount of coal that should be in the section would—of course I can't tell how it is going to go.
Q. It is a fact, isn't it, that there are several working—workable mines up in that country?
A. Yes sir.
Q. It is also a fact, is it not, that there are more prospects and ex-mines up there into which money has been put and which have been abandoned, isn't it?
78 A. There have been several mines abandoned there, that they are now reopening.
Q. There are a good many mines up there that have been abandoned, that they are not now reopening, too, are there not?
A. Well, four miles above there is one mine, I believe, that is not open; that is the Green River—that is a prospect over on Green River.
Q. The Kangley mine is not open?
A. No sir.
Q. Have you ever been on it?
A. Yes sir.
Q. What sort of a showing does that make?
A. They made a good showing there.
Q. And still it is abandoned?
A. They are not working it.
Q. They are not working it?
A. No sir.
Q. How long is it since they have worked it?
A. It has been some years.

Q. So that it is a fact that all through that country, notwithstanding the fact that there are working mines, that there are prospects and mines which, while making a good showing at the outset, have petered out?

A. No sir.

Q. No?

A. A great many of those prospects, they didn't carry them through because they didn't have the money.

Q. The Northern Pacific had the Kangley mone, didn't it?

A. I don't know who owned the Kangley mine. Kangley originally owned the mine himself. I don't know whether he held it —that is, it was generally known as his mine, but I don't know whether he held it for the Northern Pacific or not.

Q. You know that the Northern Pacific worked the mine, don't you?

A. No, I don't. I know it was worked under Kangley, but I don't know who owned the mine. The coal was purchased, I believe, by the Northern Pacific; that is, they took the out-
79 put. That is, I don't know as a fact whether it was the Northern Pacific's property or not.

Q. How long have you been practicing law?

A. Since 1901.

Q. And where have you practiced?

A. Seattle.

A. And how old are you?

A. Thirty years of age—thirty years last April.

Q. So that when you say that you first went on 34 twenty-two years ago, you were about eight years old at the time?

A. Yes sir.

Q. And up to four or five years you have been on it off and on?

A. Every year.

Q. Every year nearly?

A. Up until—I used to stay up there, that fish and hunt and stay at this old log cabin right on the railroad track.

Q. Have you ever made a practice of any other profession or business than the law?

A. Well, I have looked after the milk business for Mr. Farrell.

Q. Outside of that?

A. No sir.

Q. You never have made a business of coal mining, have you?

A. No sir.

Q. You don't pretend to be an expert in coal?

A. No sir.

Q. Or in valuing the value of coal or coal land?

A. No sir.

Q. You are simply giving your impressions?

A. Yes sir.

Redirect examination.

(Mr. TODD:)

Q. Did I understand you to say that you contested Forsyth's homestead entry or he contested your coal entry?
A. He contested the coal entry.
Q. Did you have a hearing before the Land Office?
A. No sir.
80 Q. Was any evidence introduced?
A. No sir.
Q. Why not?
A. The matter was dropped, they refused to accept it.
Q. They refused to give you any hearing?
A. Yes, just refused to accept the money and just tendered it back; that is as near as I can remember; that is all that was done.
Q. Was there no hearing before the Land Office?
A. No, no hearing.
Q. No witnesses examined?
A. No sir.

Recross-examination.

(Mr. SPOONER:)

Q. What did you mean, Mr. Williams, when you said you had witnesses to make the showing?
A. I went down there—when I went down to make my filing, took the witnesses over to prove that I had been on the land and over the land; made a tender of the money and they tendered back the money to me, refused to accept it, stating that there had been a contest filed?
Q. That there had been what?
A. A contest filed, and they handed me it back. That is as far as I went with it. I don't know just exactly who was with me at that time.
Q. Well, you did not contest it then?
A. No sir.
Q. You just dropped out of it?
A. I just let the matter drop.

(Witness excused.)

JULIUS KLINKER, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your full name, Mr. Klinker?
A. Julius Klinker.
Q. Where do you live?
A. Palmer.
Q. For whom are you working at the present time?
A. I am working for Benny Whitehouse.
81 Q. What is your business?
A. My business is butcher, by trade.

Q. What?
A. Butcher, by trade.
Q. You are a butcher by trade?
A. Yes sir.
Q. What other business have you followed?
A. Prospecting and working around mines.
Q. State how long you have been a coal prospector?
A. Since 1898.
Q. For whom did you work at that time?
A. For the Northern Pacific.
Q. For whom have you worked as a coal prospector since?
A. Well, for Gibbins' Occidental mine.
Q. Pate Gibbons. Did you ever prospect section 34, township 22 north, range 7 east of the Willamette Meridian?
A. I did so.
Q. In what year?
A. 1898.
Q. For whom?
A. For the Northern Pacific.
Q. How much of that section have you been over?
A. I have been over the whole section.
Q. What did you find in the way of coal on that section at that time?
A. I found some good coal there.
Q. On what part of the section?
A. On the west part of it.
Q. On the west half?
A. On three quarters.
Q. What?
A. On three quarters there.
Q. On the three quarters?
A. Not on the east half, east half runs alongside on that plat there, I didn't find—I didn't get no——
Q. (Interrupting.) Speak a little slower, the reporter has got to take this down.
A. I didn't find any coal at all on this east half of east half——
Q. (Interrupting.) The east half of the east half?
82 A. The other three quarters I got coal on.
Q. That is the east half of the east half—you didn't find any surface indication of coal?
A. No sir.
Q. Were there any tunnels on the east half of the east half?
A. No. Well, there was some I think through part of it—the other.
Q. How many veins of coal did you find on that section?
A. There was four veins, and I found four more after that.
Q. There is no hurry here, just take your time and answer slowly so that we can all hear you. We will save a good deal of time that way.
A. Well.
Q. You are talking too fast and too slow.

The MASTER: Speak up loud and speak slowly.

(Mr. TODD:)

Q. You say you found four veins in addition to the four veins already discovered.

A. Yes sir.

Q. What is the general character of those veins?

A. West—I had a book.

Q. Have you got a book here?

A. No, I forgot it.

Q. Left it home.

A. About five feet one vein, and six feet, a streak—six feet of coal and a streak of dirt in the middle of that about four inches; and them others is—well, however, it run about from four to six feet; a little dirt in, mixed.

Q. Did you sink any holes yourself?

A. I was working. I didn't sink no holes. We drove tunnels.

Q. You drove tunnels into this Sugar Loaf mountain?

A. Yes.

Q. Who was working with you at the time?

A. A fellow named Johnney Gurrand and a fellow named George Green, he was the boss for a while and he got his eye knocked out; then he went to Cle Ellum. He is superintendent up there now, the N. P. put him in superintendent up there at the mine.

83 Q. What kind of coal did you find?

A. Well, pretty good coal.

Q. In all the tunnels you drove?

Mr. SPOONER: Objected to as leading.

A. There was three—four good tunnels drove. The others we just went a little in, about eight or ten feet, you know, in them other tunnels, is all.

Q. On which parts of the section did you drive those tunnels?

A. The west.

Q. What?

A. On them three quarters there; that would be the northeast and the southeast and half—no, the northwest of the southwest, and half of the east—took it a mile long. Before it was different, you know, the way we had it. These fellows that took it a mile long. Forsyth—he is on the east part of it and Forsyth on the other and another two quarters.

Q. You must talk so that this man can get down what you say.

A. All right.

Q. Were these veins in your opinion veins that could be commercially worked?

A. Yes sir.

Mr. SPOONER: That is objected to as incompetent.

Mr. TODD: He is a coal prospector.

Mr. SPOONER: Every man who has dug in the ground up there is not competent to tell whether that was capable——

The MASTER (interrupting): He may answer, for what it is worth. Objection overruled.

(Mr. TODD:)

Q. What is the character of this section, as to being agricultural land?

A. There is not much good land up on the three-quarters there. Turner's place is pretty good land.

Q. Do you know Zachriah Turner?

A. I do, yes sir.

Q. How long have you known him?

A. I have known him about twelve or fourteen years.

Q. What has he been doing during that time?

A. He ran a store in Cumberland first when I knew him, and then afterwards in Palmer.

84 Q. Are those both mining towns?

A. Yes sir. Well, is no mines, it was close by it.

Q. Cumberland, you say.

A. Cumberland.

Q. How near is Cumberland to this section?

A. About four miles and a half.

Q. Did you know Thomas B. Forsyth?

A. Yes sir.

Q. How long have you known him?

A. Since he moved up there to that place——

Q. (Interrupting.) You didn't know him before that time?

A. No sir.

Q. Do you know what business he followed prior to that time?

A. I could not say. He had been always at South Prairie mine, I guess. I never know it.

Q. Did you know him after he moved onto this section?

A. Yes sir.

Q. Did you ever have any talk with him about the character of the land, as to being coal land?

A. I never talked to him about it. He drove me off once.

Q. He what?

A. He drove me off his place once.

Q. What were you doing on his place?

A. I was going in his tunnel and he would not let me go.

Q. What did he say, anything?

A. I had to get off or he would blaze away.

Q. He had a gun with him. What were you doing, driving a tunnel, you say?

A. No, I was going into it.

Q. Into the tunnel?

A. I wanted to look at it, get some samples.

Q. Where were you when he first saw you?

A. I was right there close to the tunnel and he was slashing, falling timber right across.

Q. That was the tunnel on the west half of the east half of the section?

A. Yes, right on the line.

85 Q. Did you know Ordin Olsen?

A. I knew him by sight, not very—I ain't acquainted with him; I have seen him several times when he was living there on that place.

Q. Did you know him before he went onto that quarter?

A. No.

Q. Do you know whether he had ever worked around the mines there?

A. He always worked at Black Diamond.

Q. How long before this, do you know?

A. Oh, he worked there a good while, I guess; I could not say how long.

Q. Do you know Robert Barbee?

A. Yes.

Q. How long have you known him?

—. He was working for me when I was prospecting for Gibbons the first time I met him. Him and I was drilling.

Q. Where were you prospecting at that time?

A. At section 16.

Q. Section 16 in this same township?

A. Yes sir.

Q. What was he doing with you, prospecting?

A. He was drilling, drilling, running drill for coal.

Q. Was he a miner?

A. He was—no, he is a carpenter by trade. He worked with me for three or four months there. I had a prospect and he was drilling.

Q. Had he ever worked with you on this section?

A. Not on that section, no sir.

Q. Had you ever been on that section prior to 1898?

A. Lots of times.

Q. Had you ever been on for the Oregon Improvement Company?

A. I had several fellows—companies out there to show around; I don't know which company it was. Several fellows.

Q. How long prior to 1898 had you known of this land as coal land?

A. How long before you mean?

Q. Yes, how long before 1898?

86 A. No, I didn't know it before.

Q. Before 1898?

A. That is when I was sent out to prospect.

Cross-examination.

(Mr. SPOONER:)

Q. Whereabouts were you working when the Northern Pacific sent you up there, how close to this?

A. I was in Kangley.

Q. Right next to it?

A. Yes sir.

Q. How long had you been in Kangley?
A. Well, I worked there three years.
Q. Two years?
A. Three years before they closed down.
Q. And you never had—during those three years you had never known that this was coal land on 34 until the Northern Pacific sent you over there to prospect it?
A. No, I didn't know it, I didn't see it; I was running a butcher shop then up in Kangley.
Q. Do you know why the Northern Pacific sent you over there to prospect?
A. Well, I went for it.
Q. What?
A. Yes, sure.
Q. Why?
A. Find coal, to prospect for coal; that is what they sent me there for.
Q You found some coal, did you?
A. Well, there was some veins of them and founds four more.
Q. What did the Northern Pacific do about it?
A. Well, I don't know.
Q. They never took it, did they?
A. They didn't take it.
A. *They didn't take it.*
Q. So far as you know?
A. Well, I don't know nothing about it.
Q. You say you found eight veins?
A. No, I didn't find eight veins of coal; four. Besides there was four of them when I got there.
87 Q. You mean to say there were eight veins showing already?
A. No sir—yes.
Q. How?
A. No, I could go right to it.
Q. I don't understand you?
A. Yes.
Q. There were eight veins?
A. No, I found there was four of them, found four after.
Q. You found two?
A. Four.
Q. Four?
A. Yes.
Q. Well now, how many tunnels did you find on the land when you got there?
A. Two.
Q. Two?
A. Two tunnels.
Q. One was on the southeast quarter?
A. Well, the first one.
Q. And the other was in the northwest quarter?
A. Well, on the west part along there, yes. I never ran lines, things like that.

Q. Those were the two tunnels that these men that you have heard testify here refer to, are they not, the same two tunnels?
A. Yes.
Q. That these men—that Boyles spoke of?
A. Yes. There was one tunnel sunk in about 30 or 40 feet down in there.
Q. There was a slope in connection with one of those tunnels?
A. Yes sir.
Q. That was at the mouth of one of these tunnels?
A. Yes sir.
Q. Those tunnels only showed one vein apiece, didn't they?
A. No sir.
Q. Each tunnel only showed one vein, didn't it?
A. Oh, yes, it could not show more than one.
Q. One showed one vein?
88 A. Each one shows.
Q. Each one showed a vein?
A. Different veins.
Q. And where were the other two veins that you found down there?
A. There was four I found.
Q. That had already been discovered. Two of them you found by looking in those tunnels, didn't you?
A. Yes, they was opened there already.
Q. Two you found that had already been opened?
A. Yes.
Q. In those tunnels?
A. Them other two was only just a cropping, anybody could see them.
Q. Just cropping?
A. Well, no they had a little work done on it. I don't call that a tunnel.
Q. About how much?
A. About two or three feet.
Q. Did you dig down any deeper?
A. I did.
Q. How far?
A. Oh, maybe five or six or ten yards, something, there was some cut drove into it, now, shows up there.
Q. Where were the other four?
A. All of them on the side hill there.
Q. On the side hill?
A. Yes sir, right up there on that mountain side.
Q. And how deep down did you dig on the other four that you discovered?
A. We didn't dig down, we drove in.
Q. Or drive in, I mean?
A. Well, I don't know exactly; I never measured.
Q. Well, just give us an estimate.
A. Oh, maybe about ten or twelve yards or——
Q. (Interrupting.) Which?

A. About ten or twelve yards, something like that.
Q. Ten or twelve yards?
A. Yes.
89 Q. And what did you find?
A. Found coal.
Q. The same—did you find the same amount in each one?
A. No sir. No sir, there is different veins, there is a good deal of difference between each vein too.
Q. How far up the side of the hill were these?
A. Well, not very—four, five, six veins. Where they dip down from the other side, where it slopes down from Sugar Loaf, two veins on this side before you get up where that tunnel was drove in with Forsyth's. Then there is a vein, another one we found away down on the corner there.
Q. How long were you in there doing that work for the Northern Pacific?
A. About four or five months, I guess.
Q. Four or five months?
A. Something like that. I don't know exactly. We went in to Issaquah from out there.
Q. Do you know why the Kangley mine closed down?
A. Well, that is hard to say. It went out of coal.
Q. What?
A. It went out of coal.
Q. Out of coal?
A. They could not find it again.
Q. That is right adjoining, right next to this section, isn't it?
A. That is on 26 this is. No, it is 35 between it.
Q. What?
A. Yes, it adjoins too.
Q. It corners it, doesn't it?
A. Yes, corners.
Q. Do the veins on the Kangley run the same direction that these did that you found?
A. Yes sir.
Q. On 34?
A. Yes, run the same way.

Redirect examination.

(Mr. Todd:)

Q. You stated that you did not know this was coal land until you went on it in 1898?
A. No, I didn't know nothing about it before that.
90 Q. Had you prior to that ever heard it spoken of as coal land?
A. Yes, coal land.
Q. How generally was that spoken of as coal land around there in 1898 or prior thereto?
A. Well, the fellow what owned that, what was living there, he told me, he said we had to get permit for him to get in there.

Q. I mean how generally around there did you hear it spoken of as coal land?

A. Oh, they have all said that, every one of them around there knew it is coal land.

(Witness excused.)

PATRICK WALSH, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your full name?
A. Patrick Walsh.
Q. W-a-l-s-h?
A. W-a-l-s-h.
Q. Where do you live?
A. Issaquah.
Q. What is your business?
A. Farming.
Q. How long have you been farming up there?
A. About elev- years, I guess.
Q. What did you do prior to that time?
A. Worked in coal mines.
Q. What coal mines have you worked in?
A. Well, I have worked in them most all around here, Renton, Black Diamond, Franklin and Newcastle.
Q. Do you know this land which has been testified to here, section 34?
A. I do.
Q. How long have you known or been acquainted with it?
A. Well, I think the first time I went up there was about 1886, maybe.
Q. Whom did you go with?
A. Alone.
Q. What were you doing up there?
91 A. I was prospecting also.
Q. For yourself?
A. For myself.
Q. Did you prospect on this section at that time?
A. Not at that time, no.
Q. Did you go over this section at that time?
A. We had to go over it, the trail went over it.
Q. What part of it did you go on, do you remember?
A. It would be the southeast I think and north—southwest, it started at the southeast and went to the southwest.
Q. Were there any tunnels on it at that time?
A. Yes sir.
Q. How many did you see?
A. I just seen a slope that time and a tunnel that ran in by the slope.
Q. Did you examine any coal there at that time?
A. Yes sir.

Q. What kind of coal did you find?
A. Well, I considered it was pretty good.
Q. Did you notice the vein?
A. Yes.
Q. Could you state as to its width or size?
A. No, it was filled with water when I was there. I could not.
Q. Did you ever work on that section after that time?
A. Yes sir.
Q. What year?
A. About 1898—'90 and '91 I should think, some in that way.
Q. What was the general reputation around in that vicinity as to the character of that land?
A. Well, most of them considered it was coal land.
Q. How generally was that known around that vicinity in 1890?
A. Oh, pretty near everybody that came in there could see the coal on that trail; that was about the only way to get in.
Q. Did you ever work there after 1891?
A. No.
92 Q. And you went over to Issaquah about that time?
A. No, I came here to Seattle. I stayed here in Seattle.
Q. I mean have you ever lived up in that vicinity since that time?
A. I have never been up there since.
Q. You knew Zachariah Turner up there at that time?
A. No. He was clerking in Franklin store, I think; I was not very much acquainted with him.
Q. You knew——
A. Interrupting.) I knew of him.
Q. How long had he been living up there?
A. Who?
Q. Zach Turner?
A. I could not tell you that. I just passed through Franklin.
Q. Did you know Thomas Spaight?
A. Yes.
Q. Where was he living?
A. He was working at Black Diamond, I think, when I was there.
Q. For whom?
A. Black Diamond Coal Company, I think, or butchering.
Q. Did you know how long he lived up there?
A. I only lived there about two years myself.
Q. Was he there during all that time?
A. He was there during that time.
Q. Did you ever see him after that?
A. Not very often. I ain't very well acquainted with him.
Q. What?
A. I ain't very well acquainted with him.
Q. Did you know him after you left there?

(No response.)

Q. Do you know how many veins of coal were opened up on that section?

A. Well, the tunnel was one, and then there was two between that and this way, north, that northern point, that connecting on 28 and 34 and 35, I think, something in there; I know of two on the trail besides that.

Q. How many veins does that make altogether?

A. That would be four all right.

93 Q. What was the character of that coal as to being merchantable coal or not?

A. Well, the two—the slope and the other one looked all right, but the ones up above they hadn't been developed, you know, any more than just right on the grass roots.

(No cross-examination. Witness excused.)

JOHN J. FRASER, produced as a witness on behalf of Plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. John J. Fraser is the name?
A. Yes sir.
Q. Where do you live?
A. Ravensdale.
Q. You are working in the mine there?
A. No sir, not at present.
Q. What has been your occupation?
A. Miner.
Q. For how many years here?
A. Twenty-five years.
Q. Have you worked at any of the mines in the vicinity of section 34 spoken of here?
A. Yes sir.
Q. What mines?
A. I have worked in Kangley, I have worked in Durham and what we call the Alta Coal Company mine between Durham and Kangley, belonged to the Alta Coal Company.
Q. Have you ever worked in any of the Pacific Coast Company's mines?
A. Yes sir, worked in Franklin, Lawson and Black Diamond. Black Diamond was the second mine I ever worked in on the coast.
Q. Have you ever been on this section 34?
A. Yes sir.
Q. When were you on it first?
A. Twenty-three years ago, as far as I can recollect. I might have been there a little before that, but that is as near as I can recollect.

(Mr. SPOONER:)

Q. How long ago did you say?
A. Twenty-three years.

94 (Mr. TODD:)

Q. Had any tunnels been sunk on it at that time?

A. Yes sir, they were working on it when I was there, a party was—some parties was working in it.

Q. Do you remember on which part of the section they were working?

A. They were working on the slope the first time I went there, sinking a slope at the foot of the hill, almost at the foot of the hill on the southeast quarter. Of course the land was not surveyed then, but it was just—they were figuring on the southeast quarter of the section.

Q. How many men were there working there at that time?

A. There was four or five of them there. I really forget their names, all. There was Jim Maguire, Fred Hanson and there was——

Q. (Interrupting.) It does not make any difference.

A. I forget his name now, exactly.

Q. Did they take out any coal at that time?

A. They were putting out some on the dump, there was coal and dirt mixed in the slope.

Q. Did you examine that coal?

A. Well, I was looking it over a little.

Q. Did you ever use any of it?

A. Yes, we have used considerable of it after that during the time we were at Durham.

Q. What was its character, or what quality of coal was it?

A. Well, of course it was a lignite coal, there is no question about that, but it was a good burning coal and we used it to burn in the stove there in Maquire's saloon, we burned tons of it in there, packed it home in sacks and burned it during the winter. It acted good for domestic purposes, as far as I could see. Left considerable of ash and debris. You could not expect anything else from croppings.

Q. What work did you ever do on the section?

A. Well, in 1893 we were working on the Alta Coal Company and closed down for about three months, and Maquire was holding this section—a portion of it—and he sent me out to the northwest quarter of 34 to work some assessment he wanted to do or
95 something, he called it assessment anyhow, and to drive the tunnel and get some more coal out and fix up a little out on the northwest quarter. That is about all the work ever I did on it, to amount to anything.

Q. Did you build a cabin there at that time?

A. The cabin was built when I went out, there was a cabin built.

Q. Have you ever opened or assisted in opening any veins of coal on that land?

A. Not more than just what little work I done on them that was open. I worked a little in a couple of them, but not very much.

Q. How many veins were opened on that section, to your knowledge?

A. There is a slope, a tunnel drove on the southeast quarter of it.

Q. Now, that tunnel on the southeast quarter was on the west half of that southeast quarter, was it?

A. Well now, I could not tell you that just exactly, because I don't know what distance it is now from the corner, because the land was not surveyed when we were in there and I could not just exactly state *to* whether it is on that or not.

Q. Where were the other tunnels?

A. And then way up on the hill, as far as I can learn, or as far as I can see into it at the time I looked it over, it is on the southwest quarter of 34; and the other tunnel—there is another tunnel that was supposed to be, whether it is or not, I am not going to testify exactly to that now—it was supposed to be on the north——

Mr. SPOONER (interrupting): You will not testify anything that you don't know.

A. Well, there was a tunnel drove there with the intention of being; if it ain't on, it is just on the edge of the line——

Q. (Interrupting.) Which quarter?

A. On the northwest quarter of 34.

Q. Now, when were those tunnels put there, what years, do you remember?

A. Well, they were partly driven when I went there in
96 1885, the first time I went through to Durham on that—there was no Durham there, but I went through the trail, they had a trail built there, a pony trail, through into that country, from Black Diamond.

Q. How generally was that land around there spoken of as coal land—this section, do you know?

A. Well, in the last—after Durham started up it was spoken of generally by many parties and many parties went to see it, as far as that is concerned, but what they did about it I don't know; the land was not surveyed and I don't know how matters were standing, on account of the land not being surveyed at that time.

Q. What year was Durham opened up?

A. Durham was opened up—let me see, I believe it was in 1888.

Q. What section is Durham on, do you remember?

A. Section 2.

Q. And this town or the town south of here?

A. It is in township 21.

Q. That is the township south of here?

A. Yes sir.

Q. You knew these homesteaders on there, did you, Turner and——

A. (Interrupting.) Turner.

Q. You knew Turner?

A. Yes sir.

Q. How long did he live up in that locality?

A. Well, he has been living between Franklin and Palmer—what we call Palmer, for the last eighteen or nineteen years, to my knowledge.

Q. How long have you known Barbee up there?

A. The first time I knew Barbee, I believe it was in 1900, when he first came to Ravensdale.

Q. What did he do at Ravensdale?

A. I think he was framing timbers for the mine and building chutes and one thing another, or doing a little—fixing cars etc., anything that came his way in the way of carpenter work.

Q. When did you first know Olsen?

97 A. 1893 was the first time I got acquainted with Olsen.

Q. Where was he working at that time?

A. He was working in Kangley.

Q. In the mine?

A. Yes sir.

Q. How long did he live around that part of the country?

A. He was not a great while there, he lived there for about somewhere in the neighborhood of a year, to my knowledge; that is about all. He might have been there before I came there, but that is about all I was acquainted with him.

Q. Where did he live between the time he lived at Kangley and the time he made this homestead entry?

A. Well, I guess he has been in different places. He was awhile working at Lawson's, where the new mine was opened up at Lawson's, above the Diamond. We moved from there over to Lawson's.

Q. Was he working as a miner at all those times?

A. Well, I don't know exactly. He told me he was out fishing awhile, somewhere on the Columbia River somewhere; he went off on a trip. I don't know what he was doing, but all I knew of him was as a miner.

Q. Did you know Forsyth?

A. Yes sir.

Q. Where had he been working prior to the time he made the homestead entry?

A. Most of the time during the time he made his homestead entry he was in Barnett, what we call South Prairie, the Barnett coal mine.

Q. Did you ever have any conversation with any of these homesteaders with regard to being a witness for them on their homestead entries?

A. No, Mr. Barbee asked me once in Ravensdale if I would and I stated to him this way, that I could not see my way clear to do it.

Q. Did you state why you could not see your way clear?

A. Well, I did state to him that the coal was visible and

98 that there was considerable of tons of coal out on the dump there, all piled in sight, that it didn't look very good for a man to go and testify as a homesteader. I told him he had better get somebody else. That was all that I stated.

Q. You didn't have any talk with the other homesteaders about it?

A. No, I never stated nothing to them concerning it.

Cross-examination.

(Mr. SPOONER:)

Q. Whereabouts is the Alta mine with reference to this property, how far from it?

A. It is about three quarters of a mile.

Q. When was that mine opened up, do you remember—as near as you can remember?

A. I believe it was in 1890 or 1891 when they first started in on it, something like that, 1890 or '91.

Q. When were you working on it?

A. I worked in 1893.

Q. What sort of a showing did they have at that time?

A. They had a good showing.

Q. Is it being operated now?

A. No sir.

Q. How long ago did they cease operations on it?

A. Fifteen or sixteen years now, somewhere like that anyway; I would not be sure to a year, but somewhere in that neighborhood.

Q. Do you know the reason for stopping?

A. Well, I partly know the reason why it is not operating today.

Q. Why was that?

A. Mismanagement.

Q. But in fifteen years you say it has not been operated?

A. Somewhere like that, I would not be sure that it is quite fifteen, it may be a little over, but I ain't sure. That is as near as I can get to it now.

Q. When did you work in the Kangley mine?

A. I worked in the Kangley mine in 1892.

Q. That had a good showing——

99 A. (Interrupting.) And a portion, probably, of 1893, I would not be sure.

Q. That made a very good showing at that time, didn't it?

A. There was portions of Kangley that made a good showing, although they were a little broken—formation was a little broken, faults once in a while.

Q. How far had they gone into the Kangley at the time you were working on it, just approximately.

A. They were 1700 feet down on the slope.

Q. And that has not been operated, has it?

A. Oh, yes, all that coal has all been taken out.

Q. What is that?

A. It has all been taken out. The cause of the Kangley closing down as far as I can see——

Q. (Interrupting.) Well, do you know the cause?

A. It was operating when I left there, and the reason that I think it closed down at that time——

Q. (Interrupting.) I want to know whether you know the reason. If you just simply guess, you need not state.

A. I could not go and state because the coal was all right when

I was working in it and everything was all right at that time, and they worked for about a year, I guess, or thereabouts, they worked some time, anyhow, after I quit and went to the Alta Coal Company, and that closed down during the time I was there.

(Witness excused.)

S. D. FRASER, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Mr. TODD:

Q. Mr. Fraser, where do you live now?
A. Ravensdale.
Q. S. D. Fraser is your name, isn't it?
A. Yes sir.
Q. What is your occupation?
A. Practical miner.
Q. How long have you worked as a miner in this county?
A. In this county? I have been here since 1884. I have been out of it about three years in that time.
Q. Have you ever been upon section 34, spoken of here?
100 A. Yes sir.
Q. When were you on it first?
A. I was on it first in 1885.
Q. How often have you been on it since that time?
A. It would be a hard matter for me to answer how often I have been.
Q. I mean approximately?
A. I have been various times there.
Q. Have you ever worked on the section?
A. I have worked a little, not to any great extent.
Q. Have you ever noticed how many tunnels there are or were on the section—coal tunnels?
A. I could not positively state how many might be on there.
Q. How many have you seen?
A. I have noticed two tunnels—well, in fact three. I could not call it anything else but a tunnel. This practically has caved down, part of it, but I know it was driven as a tunnel.
Q. On what parts of the section are these different tunnels?
A. There was a tunnel and a slope on the southeast quarter; there was a tunnel driven up on the southwest and one on the northwest.
Q. Did you ever examine the coal showing in those tunnels?
A. Yes sir.
Q. What kind of coal was it as far as you could judge?
A. It looked like to be fair coal, marketable coal.
Q. Did you notice how many veins of coal had been opened up on the section or have been on the section?
A. All I could testify is what I seen. I have seen three different veins.
Q. How long ago did you live in that vicinity?

A. I have been in that vicinity for—on and off for about ten or twelve years.
Q. Do you know any of these homesteaders—Zachariah Turner?
A. Yes sir.
Q. How long did he live in that vicinity?
A. He has been along from Franklin and Palmer and Cumberland for the last sixteen or seventeen years.
Q. Did you know Forsyth?
101 A. Slightly acquainted with him.
Q. Do you know how long he had lived in that vicinity?
A. I could not say that, because I have not got—hadn't been acquainted with him more than about seven or eight years.
Q. Do you know Olsen?
A. Yes sir.
Q. How long has he lived in that vicinity?
A. Olsen, he has been in that vicinity quite a number of years, he has worked in Kangley at the time it was in operation, he has worked in Lawson and at the Black Diamond, he has been in the country a good many years—Olsen has.
Q. And how about Barbee, how long has he been——
A. (Interrupting.) Barbee?
Q. (Continuing:) —been around that vicinity?
A. (Continuing:) —is a man that I don't think has been very long in the vicinity, not to my knowledge he has not.
Q. What was the general reputation in that vicinity as to the coal character of this land?
A. Well, sentiment was——

Mr. SPOONER (interrupting): I would like to object to that form of question. I think it would be proper to ask him if he knows.
Mr. TODD: Well, I should have qualified him.

(Mr. TODD:)

Q. Do you know what was the general reputation in that vicinity as to the coal character of this section 34?
A. Well, the——
Q. (Interrupting.) Do you know?
A. Yes.
Q. I mean do you know?
A. Yes sir.
Q. What was it?
A. The sentiment was that it was coal land.

(No cross-examination. Witness excused.)

EARL EVANS, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your full name?
A. Earl Evans.
102 Q. Where do you live?
A. Renton.

Q. What is your business?
A. I don't have any business.
Q. What used to be your business?
A. I used to run a saloon there. I am retired from business now, though. I don't do anything.
Q. How long have you lived in Renton?
A. Been there about thirty years.
Q. How long have you been acquainted with section 34, mentioned here in the evidence?
A. I think I have been acquainted with that section for since about 1882.
Q. Were you ever on it?
A. Yes sir.
Q. When were you on it first?
A. About 1882.
Q. And had any work been done on that in prospecting it for coal at that time?
A. Not at that time, no sir.
Q. What was the purpose of your going on it?
A. Just—the first time I went there was just—there was five of us just prospecting through the country to see what there was in there.
Q. Had you much experience prospecting for coal?
A. Not very. I have worked in coal mines but never had much experience prospecting.
Q. Did you find any indications of coal on that section at that time?
A. I found some, yes.
Q. How often were you on that section after that?
A. Oh, I crossed through at various times, been up fishing and one thing another up on Green River, after the trails was cut in there.
Q. Did you ever notice any tunnels on that section?
A. I never saw a tunnel. I saw one slope, a little slope.
Q. When was that, what year?
A. It must have been in 1885, somewhere along there.
Q. Was anybody working there at that time?
103 A. I thing there was a few men, some three or four.
Q. Are you generally acquainted around through that part of the country?
A. Yes sir.
Q. For how many years have you been?
A. I have been acquainted there since—well, twenty-six or seven years, I guess—since about 1882.
Q. Do you know the general reputation of that section in vicinity during the years prior to 1901, as to the coal character of the land?
A. Yes sir.
Q. What was it?
A. Well, the general average I think is not very good.
Q. No, but you know the general—do you know what was gen-

erally said in that country relative to this section being or not being coal land?

A. To that certain section?

Q. Yes, 34?

A. Well, I have often heard it called coal land.

Cross-examination.

(Mr. Spooner:)

Q. You state you heard it said that it was coal land. Can you state whether or not—I suppose everything in a general sort of way up there in that vicinity is spoken of as coal land, in a certain field around there?

A. Well, more or less it was, yes.

Q. Was this spoken of as peculiarly good coal land, or simply as coal land in that broad sense?

A. No, it was spoken of as coal land, not particularly good, as I know of, any more than the balance of it.

(Witness excused.)

The hearing was here adjourned until 10 o'clock tomorrow morning.

Proceedings of October 15, 1909.

F. H. Whitworth, produced as a witness on behalf of Plaintiff, having been first duly sworn, testified as follows:

(Mr. Todd:)

Q. Please state your full name?

104 A. F. H. Whitworth.

Q. What is your profession?

A. Civil engineer.

Q. What experience have you had in mining engineering?

A. I have had considerable.

Q. For what period of years?

A. Well, my first experience commenced in 1868 and I have had more or less experience since then.

Q. Has that experience had to do with coal mines?

A. Yes sir, that is what I speak of—coal mines.

Q. In this county?

A. In this and Pierce County, in western Washington.

Q. How long have you lived in this state?

A. Since 1854.

Q. Have you had experience in exploiting and developing mines?

A. Yes sir.

Q. What different mines?

A. I opened the Gilman mine, and now called Issaquah; I opened what is called the Leary mine, now the Ravensdale; I was superintendent of the Renton mine for a time; I assisted in locating and the original opening of the Wilkeson mine; also the South Prairie mine, in Pierce County; also the Wilson coal mine in Lewis County,

I think it is, near Chehalis or Centralia; and then I have examined quite a number of other coal propositions.

Q. Have you had experience in prospecting for veins of coal?

A. Yes sir.

Q. Please state whether you are acquainted with section 34, township 22 north, range 7 east of the Willamette Meridian, in King County?

A. I am.

Q. When did you first have reason to become acquainted with that section?

A. I discovered the coal on that in April, 1882.

Q. With whom were you at that time?

A. Mr. E. M. Smithers, Mr. Al. Evans and there was three other men I think, and an Indian.

105 Q. At what part of the section did you make discovery?

A. At that time the sections—township was unsurveyed, but the point that we discovered and opened up the cropping, when the survey was made it was at the south quarter corner on section 34. The south quarter corner was set on the bank just above the opening.

Q. How did you come to make discovery, were you prospecting for coal?

A. Yes sir.

Q. Did you take any steps to trace that vein?

A. Yes sir.

Q. What did you drive?

A. We drove it to the east and—well, of course we spent some considerable money in opening at this discovery point, tracing it both east and west a short distance, and then we traced it to the east along the slope of the hill and finally drove a slope and also a drift on the strike at some 800 feet east of the quarter corner and about 400 feet north of the south line of the section.

Q. In what year was that done?

A. It commenced in 1882 and continued for several years; I can't—I should say that the most of the work was done between 1882 and 1887, perhaps shorter than that.

Q. Was that work done for the purpose of exploiting the land and acquiring coal claims?

A. Yes sir.

Q. Who was interested in that exploitation?

Mr. SPOONER: Objected to as irrelevant and immaterial.

The MASTER: Objection overruled. It is a part of the res gestæ, I suppose.

Mr. TODD: Yes, that is all.

A. Syndicate was formed of four parties. Well, until the township was surveyed, there were I think simply four or five interested in the matter; that was E. M. Smithers, J. M. Colman, James Williams and myself, I guess.

Q. When did Mr. Howard become interested in the matter?

A. It was—the year I can't just state, but the Oregon

106 Improvement Company jumped the property and then he became interested in it.

Q. What position did Mr. Howard hold with the Oregon Improvement Company, if you remember?

A. I presume he was president. I can't just state now. He was the executive officer.

Q. Now, Mr. Whitworth, go ahead and describe what other work was done on this section in the way of discovery and exploitation of coal veins?

A. We were examining frequently for the purpose of seeing other veins if possible on the land. There was finally opened, near the quarter corner, on the west line of the section, a vein, and a tunnel was driven in on that—oh, I think about 150 feet, disclosing a vein there. Then on 33, the section immediately to the west of 34, a vein cropped. It was near the northeast corner of 33 and the northwest corner of 34. The strike of this vein was about sixty-five I think—south sixty-five east, running towards section 34. We drove in two tunnels on that vein, but did not reach quite to the line of 34, so that vein never was shown up on 34, although it came—the nearest point that I recollect was *was* about 60 feet from the line of section 34, but not on section 34, not exactly. That I think gives the work that was done. This was continued during a number of years, cleaning out the tunnel, driving a little further, opening up a little more so as to show more fully.

Q. How much money did you and the association that was interested in this section spend in these exploitations?

Mr. SPOONER: Objected to as irrelevant and immaterial.

The MASTER: Objection sustained.

Mr. TODD: Well, the reason of that is to show how much work was done on it and to show that it must necessarily have come to the knowledge of these homesteaders. I want to show how much work this association did on this during the ten or fifteen years that they were in possession there, showing it must have necessarily have come to the knowledge of these homestead entrymen that work was done on there in exploitation.

107 Mr. SPOONER: I will withdraw the objection. You may state how much money was spent.

(Mr. TODD:)

Q. Go ahead, Mr. Whitworth.

Mr. SPOONER (continuing): If you know?

A. Something over $8,000.

(Mr. TODD:)

Q. Describe the topography of this section?

A. This section is also called Sugar Loaf mountain. This is a mountain that rises to a peak, the center of the peak a little to the south of the center of the section, and it slopes down on all sides, the mountain being an irregular pyramid; the east line of the section being the lowest line. On the south it runs into 3, and the ridge continues on to the south and so does not reach the low level on *on* the east.

Q. What is the character of the soil on the section?

A. Disintegrated sandstone.

Q. Is it in your opinion suitable for agricultural purposes?

A. Well, it is not bad land. It would be fair upland for orchard purposes, something of that kind.

Q. Please state——

A. (Interrupting.) Oh, let me state: The east half of the east half is somewhat low and is covered with maple and there is a stream meanders through it; that east half or the east half is fair bottom land, rather, for cultivation after it is cleared.

Q. You understand the different parts that were homesteaded, the east half of the east half?

A. Yes sir.

Q. The west half of the east half and the two west quarters?

A. Yes sir.

Q. Please state whether you found coal on all of those different subdivisions?

Mr. SPOONER: I object to the leading nature of the question.

(Mr. TODD:)

Q. Please state whether you found coal, or not, upon those different subdivisions?

Mr. TODD: I don't know whether he did or not.

A. We never opened any coal on the east half of the east half.

Q. Did you on the other subdivisions?

108 A. No sir; on the northwest quarter of the northwest quarter we never got the coal quite——

Q. (Interrupting.) The northwest quarter was located?

A. The northwest quarter, we never got the coal, quite, on the northwest quarter. As I say, a vein cropped in 33 and we traced it and had driven to within 60 feet of the line, but never had driven across.

Q. From your examination, did you determine whether there was coal on the east half of the east half?

A. We were very sure there was.

Q. From your examination, did you determine whethere there were veins of coal upon the northwest quarter?

A. Yes sir.

Q. Now, how many veins of coal did you discover upon the whole section?

A. There was only the three—well now, on the section itself, you mean?

Q. Yes, upon the whole section.

A. Only the two that showed up on the section itself.

Q. How many years were you acquainted with the section?

A. From 1882—I think it was 1902 when we were driven off of it.

Q. Now, what kind of coal was this that you discovered there?

A. The discovery vein was a bituminous coal; the vein showing on section 33, running towards 34, was not so strong a bituminous coal, but it was a semi bituminous.

Q. Did you ascertain whether the veins contained a merchantable amount of coal and whether it was of a merchantable quality?
A. Yes sir.
Q. Was it your opinion and is it now, that the land was valuable for the coal upon it?
A. Yes sir.
Q. Mr. Whitworth, state whether the west half of the east half was and is still in your opinion more valuable for the coal upon it than for agricultural purposes?

109 Mr. SPOONER: That is objected to as leading. Certainly it is leading.
The MASTER: Objection overruled.

A. Yes sir.

(Mr. TODD:)

Q. State whether the southwest quarter in your opinion is more valuable for agricultural purposes or more valuable for the coal upon it?
A. For the coal.
Q. State as to the northwest quarter?
A. For the coal.
Q. State as to the east half of the east half?
A. For the coal.
Q. Did you ever take steps to acquire title to this section—you and your associates—from the United States Government?
A. We filed as a syndicate of four on the section.
Q. How long did you keep your possessory rights?
A. An association was formed at several different times. I was at every time the officer in charge. And so it was for a number of years, that associations were formed and held this coal.
Q. Who paid the expense of the filings and work *down* upon it?
A. The principal work, as I say, was done before the section and township was surveyed, and that was paid by this first syndicate that I spoke of, Mr. Smithers, Mr. Coleman, Mr. Williams and myself.
Q. After Mr. Howard was interested in it, what part of the expenses did he pay?
A. He paid——

Mr. SPOONER (interrupting): That is objected to as irrelevant and immaterial, what part Mr. Howard paid.
Mr. TODD: I am going to bring notice of that home to the defendant; that is the purpose of the question.
The MASTER: Objection overruled.

(Mr. TODD:)

Q. Go ahead.
A. One third.
Q. During how many years was that paid by him?
A. I have not refreshed my memory by looking it up, but I would think somethinge like about eight years.

110 Q. When did you first learn that homestead entries had been made upon this section, that is with reference to the time after they were made, how soon after they were made did you learn of it, you know?

A. Within a few months.

Q. What steps did you then take to protect your rights there?

A. We then attempted to go on with a force, so as to open up afresh the tunnels that had already been constructed, and also to carry the prospect over onto the east half of the east half and to produce the tunnel in 33 so as to reach 34 and show the coal on 34 itself.

Q. Did you go up there yourself personally at that time? A. At first Mr. Sidney Williams went up.

Q. When did you go up yourself personally?

A. I went up in about a month I think—or a week, after Mr. Williams had been there, I think it was in—from my guess now it was in May.

Q. Of what year?

A. Of 1902. I won't be positive about the year, because I have not refreshed my memory, but it was very shortly after the filing of the homestead entries, and it was early in the year.

Q. What part of the section did you go upon at that time?

A. When I first went, why, we went on the east half of the east half and on the northwest quarter.

Q. Whom did you meet when you went on there, if anybody?

A. At that time—well, right at that time we only—I only met Mr. Turner.

Q. What was done at that time?

A. There was nothing done at that time but to plan then how we should go to work in order to show the coal on the other portions of the tract.

Q. Did you have any conversation with Mr. Turner?

A. Not at that time.

Q. When did you?

A. Well, about a week afterwards I went up with three or four men, I think it was and set them to work on different points, to endeavor to open up the croppings in these portions that the
111 coal had not been shown. I left them there for several days and then went back again and at that time I took them onto the east line of the east half of the east half, where, by projecting the strike of the vein—the discovery vein, it would indicate a possibility of its coming through, and set them to work. While we were at work, Mr. Turner and Mr. Forsyth came down and ordered us to stop, said that if we crossed the line that the first man that crossed it would be shot.

Q. Where they armed?

A. Yes sir.

Q. You were working on the east line of the section then at that time?

A. Yes sir, close to the east line of the section.

Q. Was there any talk there about coal between you?

A. Yes sir.

Q. What was the conversation, as near as you can remember it?

A. Well, I told them that of course I was satisfied the coal went through there and I wanted to find it, and that we were interested in coal and wanted to show it up on that portion of the section. I said to Mr. Forsyth, "Of course if we are allowed to go over on the west half of the east half it will be a very small matter to trace the coal down and show it on the east half of the east half," but he said he would not allow us to go.

Q. Was that tunnel still open on the west half of the east half at that time?

A. Well, that I can't say, I understand that——

Mr. SPOONER (interrupting): Just a minute——

(Mr. TODD, interrupting:)

Q. I mean at that time or shortly prior thereto?

A. Shortly prior thereto it was, yes sir.

Q. What was the size of that tunnel then?

A. The tunnel was about eight feet in height and six feet in width.

Q. Was it concealed?

A. No sir.

Q. Had you known Mr. Turner and Mr. Forsyth previously?

112 A. I had known Turner slightly, and Forsyth I think I had met him, he had been a miner at South Prairie.

Q. At South Prairie. Where had Turner been working prior to that time?

A. Turner had been about Palmer for some time. I don't know what—I think he had worked in the mine, but I don't know just what mine.

Q. After your experience with Mr. Turner and Mr. Forsyth, what did you then do with your gang of men?

A. Then I took them onto the Northwest quarter of the northwest quarter and endeavored there to—set them to work for the purpose of tracing the vein on 33 across onto 34. They worked there for a day or two and then were notified to quit. I was not there, however, when they were notified.

Q. You were not there when they were notified to quit?

A. No sir.

Q. Did you while you were working there see Mr. Olsen at any time?

A. No sir.

Q. What steps did you take after that, if any, to acquire these lands as coal lands?

A. We came to town and went to see the prosecuting attorney, to see if we could not get authority to go onto the land and show up its character. The Land Office notifying us that we must show, from recent examination, the character of the land. The prosecuting attorney said he could do nothing for us. So then we made application to the Land Office to have the government take it in hand and give us an opportunity of showing the character of the land, but they refused.

Q. Do you know whether this section, since you made the discovery upon it, has been known in that vicinity as coal land?
A. Yes sir.
Q. How generally has it been—has it been so known?
A. Yes sir.
Q. How generally has it been known as coal land?
A. Why, I think by every one that has any knowledge of coal, of King or Pierce County.
113 Q. What is its reputation as to being good or bad coal land?
A. The reputation is good.

Cross-examination.

(Mr. SPOONER:)

Q. You say you discovered coal on 34 in 1882?
A. Yes sir.
Q. Mr. Evans who was in here, testified here yesterday he lived at Renton, was one of the men that was with you?
A. Yes sir, I presume so. I was not here yesterday.
Q. Well it would——
A. (Interrupting.) Harold Evans.
Q. Yes, that is the man.
A. Yes sir.
Q. You testified that beginning with 1882 and running possibly from 1882 to 1887, and possibly less time than that, that you expended, or your syndicate expended about $8,000?
A. Yes sir.
Q. What percentage of that was expended on 33?
A. None of it.
Q. None of it?
A. No sir.
Q. The $8,000 you say was expended on 34?
A. Yes sir.
Q. What are the items—I don't mean the small items—but what in your mind and memory make up the items that constitute that?
A. The items was the hire of the men, and the food, packing in the grub and material etc.
Q. Do you include the filing fees year after year on that property?
A. No sir; they did not amount to anything.
Q. How deep was this, how long was this tunnel?
A. The tunnel was about 60 feet in depth.
Q. About 60 feet?
A. Yes sir.
Q. Did you state that the Oregon Improvement Company jumped this land?
A. Yes sir.
114 Q. Why did you make that statement—when was that?
A. What year?
Q. Yes.
A. I judge that was about 1884.

Q. About 1884?
A. Yes sir.
Q. And what was the authority for the statement that they jumped the land, that is, on you?
A. We had possession of it and they came in by force and removed us and——
Q. (Interrupting.) In——
A. (Interrupting.) How is that?
Q. In 1884?
A. Yes sir. I say I think it was 1884. I won't be positive to the year.
Q. Who came in and what were the circumstances?
A. Our men had possession of the section and in some way they trumped up a charge and the sheriff was sent up and our men were arrested and brought down town and their men put in charge. We made a counter charge, the sheriff was sent up and arrested their men and our men were put in charge.
Q. Well, how long did this joint occupation continue?
A. This seesaw?
Q. Yes.
A. Why——
Q. (Interrupting.) Your men were put in charge at the end of your testimony now; did they stay in charge?
A. I think that it finally developed that both parties then called rather a truce and were both on the ground, and then it was—a suit was brought and it was fought in the courts and finally a compromise was made.
Q. And the Oregon Improvement Company, a corporation, known as the Oregon Improvement Company, was a party to the suit?
A. Yes sir.
Q. And it was the defendant, was it?
A. It was defendant, yes sir.
Q. That put your people out of possession?
115 A. I won't say that they were named as a party to the suit, but they were the parties.
Q. How do you know that?
A. Because Mr. Howard, as their representative, entered into the negotiations.
Q. Did he say he was acting as their representative?
A. Yes sir.
Q. And why do you make the same statement in regard to its being the Oregon Improvement Company's men who jumped it as you call it?
A. Well, because we knew.
Q. Well, how?
A. They were employed by the Oregon Improvement Company.
Q. How do you know they were?

(No response.)

Q. Isn't it a fact that you thought at that time, and your correspondence would show it, that you thought then that you were dealing with Mr. Howard personally?

A. No sir. This was the fact: We said—we allowed Mr. Howard personally to come in and be represented, but it was—he was acting for the Oregon Improvement Company, and the bills were always paid by the Oregon Improvement Company. I say always—not at first, but afterwards they came to be all paid by the Oregon Improvement Company.

Q. What do you mean by afterwards? How long afterwards?

A. I think it was perhaps a year or two that Mr. Howard attended to them himself.

Q. Isn't it a fact at the time you speak of you were dealing personally with Mr. Howard?

A. For a year or two we insisted—for a year or two we insisted that it should be personally with Mr. Howard.

Q. For a year or two?

A. Yes sir.

Q. Wasn't it for quite a number of years.

A. Well, I won't say the length of time, because it has been sometime since, but it was at first with Mr. Howard personally.

Q. Well, by at first—up to what date would you say?

116 A. Well, as I say, I think perhaps it was a couple of years.

Q. Well, up to what date about?

A. If it was in 1884 that it came, it would have been about in 1886.

Q. In 1886?

A. Yes sir.

Q. And when was this jumping you, '84?

A. 1884, is my recollection.

Q. Then at that time the time had not elapsed within which you still were dealing with Mr. Howard personally, you were still dealing with Mr. Howard personally at that time, because you say you insisted on dealing with him personally up to 1886?

A. Yes sir.

Q. Well then, why did you state the Oregon Improvement Company jumped the land, if they hadn't, if you hadn't recognized them yet at all?

A. We hadn't recognized them, but we knew they jumped it.

Q. How do you know it, if you were still dealing with Mr. Howard personally?

A. We were not dealing with Mr. Howard then. We dealt with him when he compromised.

Q. You said you dealt with him up to 1886?

A. From 1884 to 1886, yes sir.

Q. From 1884 to 1886?

A. Yes sir.

Q. Then Mr. Howard had nothing to do with it when you first went in there?

A. No sir.

Q. Nothing until 1884?

A. Nothing until they jumped the claim, and then there was a compromise.

Q. Now, as a matter of fact, the land was unsurveyed and was not surveyed until years afterwards, was it?

A. I have forgotten when it was surveyed.
Q. It was not surveyed until '95 or '96, was it?
A. I don't remember when it was. It was after, sometime after 1884 that it was surveyed, but just when I don't recall.
117 Q. Isn't it a matter of fact that you didn't know of the Oregon Improvement Company in connection with this property at all until as late as 1896 or '7?
A. It is not true.
Q. It is not true?
A. No sir.
Q. Now, in speaking of the amount of coal on the land, you say you discovered two veins and you opened it up in just exactly how many places and to what extent?
A. At the discovery point there was a small tunnel driven in, the principal work was surface work.
Q. Of what did that consist, how extensive was the surface work and how extensive was the small tunnel?
A. The small tunnel was only in probably 20 feet.
Q. 20 feet?
A. Yes sir.
Q. And what about dimensions?
A. I suppose something like six feet high and six feet wide.
Q. What was the nature and extent of the surface work that you speak of there?
A. The surface work was simply on the surface, showing up—it was a very wide vein and it did not cover a space over 50 or 60 feet square.
Q. And what did it consist of, how deep did it go?
A. Just the surface, only a few feet.
Q. Only a few feet?
A. Yes sir.
Q. Now, what other uncovering of the vein or veins did you do on section 34?
A. Well, the vein was traced along the side of the hill to the east
Q. Well, what does that mean, how far apart were the openings that you made, in tracing it, or what did the tracing consist of?
A. Tracing consisted in following the cropping, digging in at frequent intervals, finding either the roof or the floor, or the vein itself, and so tracing it on around the hill to a lower point, where the tunnel and slope was put in.
118 Q. And how extensive work was done, how long did it take, that tracing, merely tracing on the surface of the vein?
A. That tracing probably did not take more than two or three days.
Q. And what other work was done?
A. Then the slope was driven on this west half of the east half and the tunnel driven.
Q. That constitutes the work?
A. At that point, yes sir.
Q. About how long would it take or did it take to drive the small

tunnel and do that little surface work that you *s*teak of, about 50 feet?

A. If it were driven at one time the tunnel—oh, could be driven—the open cut and the tunnel made I suppose in six weeks.

Q. In six weeks?

A. Yes sir.

Q. A 20 foot tunnel?

A. No sir, that was—which tunnel are you speaking of?

Q. I am speaking of the small tunnel, the little one that you spoke of.

A. The 20 foot tunnel?

Q. The 20 foot tunnel and the surface work that you said only went down a foot or two.

A. Oh, that could have been done in a month's time.

Q. And the other tunnel?

A. The other tunnel——

Q. (Interrupting.) And the slope?

A. Oh, two or three months' work.

Q. How many men were up there?

A. How many men?

Q. Yes.

A. Varying. Sometimes we had only three men sometimes six or eight.

Q. Well for what length of time would you employ as many as six or eight?

A. Probably not more than a year altogether six or eight.

Q. If you had six or eight men on there for a year and it took from sixty to ninety days to make the large tunnel and the
119 slope, and thirty days to make the small one, and two or three days for the tracing, then I assume that the balance of the time those men were on there to hold possession, were they not?

A. They were prospecting different parts of the tract so as to see if there were other coal veins.

Q. That section or the general tract of land up there?

A. Of that section.

Q. Of that section.

A. We were only interested in that section.

Q. What other openings did they make during all this time?

A. Then the opening was made near the quarter corner on the west.

Q. What was the evidence of the existence of this syndicate of yours?

A. What is that?

Q. What was the evidence, I say, of the existence of your syndicate, did you have any agreement, any written agreement?

A. No sir.

Q. Simply had a verbal agreement?

A. Yes sir.

Q. You filed on what particular portion of the section yourself?

A. The syndicate—if I remember now a syndicate of four filed——

Q. (Interrupting.) What is that?

A. If I remember correctly, a syndicate of four, an association is what the law terms it, an association I think filed—of four, files on the entire section, without subdividing it.

Q. Mr. Sydney Williams said he filed on one portion of it, yesterday, and I asked him whether he was filing all by himself or in connection with others who were filing on other portions, and he said he filed all by himself, without any connection with anybody else. If he filed on one quarter section in connection with this thing, the rest of you must have filed on something else?

A. Well, as I say, perhaps I am wrong in that, that it does require subdivision into four quarters. I was thinking that
120 an association could file on the entire section without subdividing, but that I am not sure of.

Q. Isn't it a fact that at the time you filed on this section, or the portion of the section that you filed on, that you filed on a certain portion of it and that you were obliged to make and did make an affidavit to the effect that you were filing on it purely and simply in your own behalf, for your own self?

A. No, sir, an association does not require that form, the law allows an association of four to be formed for the purpose of——

Q. (Interrupting.) But you didn't file on it as an association, did you?

A. Yes sir.

Q. Didn't you file on it individually?

A. No sir.

Q. Then you think Mr. Williams is mistaken?

A. Yes sir.

Redirect-examination.

Mr. TODD: I want to ask a question or two that might possibly have been direct, if you permit it, Mr. Spooner.

Mr. SPOONER: Certainly.

Mr. TODD:

Q. This tracing which I show you, have you marked the base of the mountain on that and the tunnels that were driven? Just describe it, Mr. Whitworth (handing tracing to witness).

A. The tunnel marked in this northwest quarter, that is an error, there is no tunnel there. The tunnel was on the—in this part, which was the southwest.

Q. Have you a red pencil?

A. No sir.

Mr. SPOONER: You will not offer that in evidence?

Mr. TODD: I was going to, to illustrate his testimony.

(Mr. TODD:)

Q. Did you draw this tracing showing the base of the mountain?

A. Yes sir.

Q. Is that correct.

121 A. Yes sir.

Q. Showing how the base of the mountain runs through this section and around it?

A. Yes sir.

Mr. SPOONER: I want to cross examine on the correctness of this.

Mr. TODD: Yes.

(Mr. TODD:)

Q. The tunnels or tunnel on the southwest quarter, and the other discovery tunnel and slope near the line between the east and west half of the east half, are correct?

A. Yes sir.

Q. But the tunnel as shown on the northwest quarter is a mistake?

A. Yes sir.

Q. It should not be there?

A. No sir.

Q. And the line indicating the base of the mountain is approximately correct?

A. Approximately correct, yes sir.

Mr. TODD: I wish to offer this in evidence to illustrate the testimony of the witness as to the topography of the land and the location of the tunnels.

The MASTER: It is subject to cross examination, of course.

Recross-examination.

(Mr. SPOONER:)

Q. What lines have you put on there, Mr. Whitworth?

A. I have indicated this as discovery, and I have indicated this as the tunnel. I have indicated the base of the mountain and I have indicated here a point, and I indicated that point and there——

The MASTER (interrupting): Make your answers, Mr. Whitworth, so that they will be intelligible in the record.

A. Shall I answer that again?

(Mr. SPOONER:)

Q. Yes, I guess you had better. What the judge means is, mention it with reference to this, these lines, so that by reading it in there and looking at this Judge Hanford can find out what you were saying.

122 A. I have indicated the point of discovery and marked it "discovery"; I have indicated there the point where the tunnel and slope which is in the west half of the east half of the section; I have also indicated the summit of Sugar Loaf mountain; I have also indicated the approximate position of Sugar Loaf mountain; I have also indicated the tunnel in the southwest quarter of the section, this tunnel being near the northwest corner of that southwest quarter. I have also indicated a point here marked "tunnel" in the northwest quarter, which was an error.

Q. You mean that that should be changed—the northwest quarter eliminated altogether?

A. Eliminated?

Q. Yes.

A. I have also marked here outside of this section, which is in section 34 and near the northwest corner of the section, the approximate position of the tunnel driven on 33 towards 34.

Q. You drew all the lines on this, then, except the outlines?

A. Yes sir.

Q. And the lines dividing the section into quarters?

A. Yes sir; that is, I put them in pencil.

Q. Yes, you put them in?

A. Yes sir.

Q. They are your lines?

A. Yes sir.

Q. You have marked here on this little plat or drawing your notion of the extent of the summit of this Sugar Loaf mountain and its location in the section. Have you ever made any data or measurements or anything to show the location in that section of this summit of Sugar Loaf mountain?

A. I don't think I have made any surveys to show it, but it is a very prominent——

Q. (Interrupting.) Well, just answer my question as I ask you. Have you ever surveyed it? You know if you have, if you ever surveyed it?

A. To show the summit?

123 Q. For the purpose of finding out what proportion of this section and whereabouts in it is the summit of this hill?

A. No sir.

Q. You have never made any measurements of any kind or taken any observations of any kind with a view to finding how large this summit is?

A. No sir.

Q. When was the last time you were up there?

A. My recollection was, as I stated, in 1902.

Q. 1902. I was up there last week and I want to ask your confirmation of my recollection that this hill, the sides of this hill and the summit of it are largely covered with timber, that is, what they speak of as mining timber?

A. Second growth timber, yes sir.

Q. Second growth timber?

A. Yes sir.

Q. That is true, is it not?

A. True, yes sir.

Q. And your marking of this summit on here and its place in the section is derived from your recollection of how it looked to you and without any data, that is, any measurements or survey?

A. No measurements to locate it, no sir; just simply observation.

Mr. Todd: I offer this in evidence simply for the purpose of illustrating the testimony of the witness.

The Master: Very well, it may be admitted.

Tracing referred to was marked complainant's exhibit "E", same being returned herewith.

(An adjournment was here taken until two o'clock this afternoon.)

N. H. MARTIN, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. State your name?
A. N. H. Martin.
Q. Where do you live?
A. At Renton.
Q. How long have you lived at Renton?
124 A. Three years.
Q. What is your business?
A. I have got no business now.
Q. What has it been in former years?
A. Well, I was some years with the old Seattle Transportation Company, running carrying coal from Seattle to Newcastle, and then I was outside foreman for the Oregon Improvement Company, and I was assistant——
Q. (Interrupting.) During what years?
A. That was in 1876.
Q. How long did you work for the Oregon Improvement Company?
A. I worked for them for two years—four years at Newcastle, as outside foreman.
Q. That was in 1876?
A. Yes, from 1876.
Q. What other experience have you had in mining?
A. Well, I have not had very much experience, only I have been connected with looking after coal; never mined any?
Q. What do you mean by looking after coal?
A. That is sorting the different kinds of coal and seeing that the proper kind of coal was shipped, you know, cleaned.
Q. Did you ever work at Franklin or in that vicinity?
A. No sir.
Q. Have you ever seen section 34?
A. Yes sir.
Q. When was that?
A. The first time I saw it was in 1882.
Q. How often have you seen it since that time?
A. Twice.
Q. What time was that?
A. The second time, I think it was in 1884.
Q. And when was the last time?
A. I think it was in 1892.
Q. Did you ever see any coal on the land?
A. I did the first time I went there.
Q. Did you the other times?

A. No sir.

125 Q. Where did you see it the first time?

A. In 1882.

Q. I saw where, on what part of the section?

A. Well now, I can't tell you.

Q. Where did you see it?

A. I saw it in a small drift, a prospect tunnel that they had driven in.

Q. What was the depth of the vein, if you remember?

A. I should think—I measured it—oh, I think it was between four and five feet.

Q. What was the character of the coal?

A. It looked good to me.

Q. Had you known of this section as coal land prior to that time?

A. I always heard it was.

Q. You have never been on there since 1892?

A. No sir.

Q. Do you remember the surface of the land about that vicinity on that section?

A. Yes.

Q. What was the character of the surface of the land?

A. What do you mean?

Q. Was it rough or smooth?

A. Well, parts of it very rough.

Q. Timbered or not timbered?

A. There was timber, timber on a good deal of it.

Q. What kind of timber?

A. Well, small timber.

Q. Could you state, or not, whether it was suitable for agricultural land?

A. I don't think it was.

(No cross examination. Witness excused.)

J. C. Ford, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

(Mr. Todd:)

Q. State your name, please?

A. J. C. Ford.

Q. What is your business?

A. Vice president and general manager of the Pacific Coast Company.

126 Q. That company is the successor of the Oregon Improvement Company?

A. Yes sir.

Q. Have you in your office the old records and files of the Oregon Improvement Company?

A. Why, some of them.

Q. You have been served with a subpœna duces tecum to produce certain of them, have you not?

A. Yes sir.

Q. Have you with you a letter from John L. Howard, dated San Francisco, November 8, 1890, to C. J. Smith?

A. Letter dated November 8th, from John L. Howard to C. J. Smith, yes sir.

Q. Give me that, please?

A. I don't want to leave that here, it is a part of our record. Just—if you could submit it to the court. I would prefer to leave a copy of it rather than the original.

Mr. TODD: Do you want to see this, Mr. Spooner (handing paper to Mr. Spooner)?

Mr. SPOONER: I think I have seen it.

(Mr. TODD:)

Q. Who was the then manager of the Oregon Improvement Company, if you know?

A. I don't know.

Mr. TODD: I offer this letter in evidence and ask leave to submit a copy of it for the record instead of the original.

Mr. SPOONER: It is objected to as irrelevant and immaterial.

The MASTER: Objection overruled.

Mr. TODD: You have no objection to a copy being put in the record instead of this.

The WITNESS: You could mark the letter, if you wish, and I will see that a copy of it is sent up. I haven't got a copy of it here.

Mr. TODD: Yes, if you will.

The MASTER: If it is in accordance with your mind, you can read it into the record, let the shorthand reporter take it.

Mr. TODD: All right, I will read it in the evidence later.

127 Mr. SPOONER: I would just as soon you would have a copy, if you want him to send a copy up.

The WITNESS: I will undertake to see that the copy is submitted.

Mr. TODD: I have a copy of it.

Mr. SPOONER: All right, any copy that you say is a copy will be satisfactory to us.

Letter referred to was marked complainant's exhibit "F", same being returned herewith.

(Mr. TODD:)

Q. Have you also a letter there from John L. Howard to C. J. Smith, dated Dec*me*b-r 8th, 1890?

A. What is the next?

Q. The letter of December 8th, 1890, to C. J. Smith?

A. Yes sir. I have that letter from John L. Howard to C. J. Smith.

Q. Well, produce it.

(Witness produces paper.)

Mr. TODD: I offer this letter in evidence as complainant's exhibit "G."

Mr. SPOONER: I will make the same objection, as irrelevant and immaterial.

The MASTER: Objection overruled.

Letter referred to was marked complainant's exhibit "G," same being returned herewith.

(Mr. TODD:)

Q. Have you a copy from the records of the Oregon Improvement Company, or the original letter written by C. J. Smith to H. W. McNeal, dated December 9, 1890?

A. I have.

Q. What is that, the original or a copy?

A. An original. They are all originals.

Mr. SPOONER: The same objection.

(Mr. TODD:)

Q. You are familiar with the signature?

A. Yes.

Q. Whose signature is that?

A. I think that is Mr. Smith's signature.

Mr. TODD: I offer this in evidence as complainant's exhibit "H."

Paper referred to was marked complainant's exhibit "H," same being returned herewith.

128 (Mr. TODD:)

Q. Have you a copy of a letter to John L. Howard, Esq., signed by F. H. Whitworth, dated January 13, 1897?

A. I have.

Q. To which are attached a bill and a voucher, or are those a part of the same?

A. I think there was a bill attached. The voucher was not a part of that attachment, it was probably made out later.

Mr. TODD: I will offer that letter and the accompanying bill in evidence as complainant's exhibit "I."

Mr. SPOONER: That is objected to as irrelevant and immaterial. There is nothing in that letter that has any connection or shows any connection between Mr. Smith—any knowledge about this land by Mr. Smith.

Mr. TODD: I connect it up with the voucher here.

The MASTER: Objection overruled.

Paper referred to was marked complainant's exhibit "I," same being returned herewith.

Mr. TODD: I offer a voucher of the Oregon Improvement Company, C. J. Smith, receiver, for account payable to John L. Howard, manager, San Francisco, California, and approved by C. J. Smith, receiver and general manager.

(Mr. TODD:)

Q. Do you know the signature on there under "approved"?

A. I don't know whether that is Mr. Smith's signature or not. I don't look like it to me. I am not sure.

Mr. SPOONER: Ask Mr. Smith.
Mr. TODD: Of course he is not on the stand now.
Mr. SPOONER: No, but that is all right.
(Mr. Todd shows paper to Mr. Smith.)
Mr. SMITH: Yes, that is mine.
Mr. TODD: I offer this as complainant's exhibit "J."
Mr. SPOONER: That is objected to as irrelevant and immaterial.
The MASTER: Overruled.
Paper referred to was marked complainant's exhibit "J," same being returned herewith.

Mr. TODD: That is all, Mr. Ford.

129 The WITNESS: Well now, can I take those documents and have copies made and send them in, certified to *my* myself?
Mr. TODD: I have no objection.
Mr. SPOONER: I have none. That will be all right.
The WITNESS: Who shall I send them to?
Mr. TODD: Send them to Judge Greene, the Master in Chancery.
A. Judge Greene; all right.
(No cross-examination. Witness excused.)

F. H. WHITWORTH, being recalled on behalf of plaintiff, testified as follows:

(Mr. TODD:)

Q. I show you here a letter marked complainant's exhibit "F" and ask you if you know that signature (handing paper to witness)?
A. John L. Howard.
Q. Is that the Howard you spoke of as being interested in this coal land together with you?
A. Yes sir.
Q. I show you another exhibit, marked complainant's exhibit "G," and ask you if you know the signature to that letter?
A. Mr. Howard's.
Q. That is the same Mr. Howard——
A. (Interrupting.) Yes sir.
Q. (Continuing:) About whom you testified. I show you herewith a letter signed F. H. Whitworth and ask you if you know that signature?
A. Yes sir, that is mine.
Q. Do you remember the circumstances of writing that letter?
A. Yes sir.
Q. What were they?
A. It is expressed in the letter here that——

Mr. SPOONER (interrupting): This is objected to as irrelevant and immaterial.
The MASTER: Objection overruled.

(Mr. TODD:)

Q. Was it in connection with your testimony this morning, as to

the expenses, in regard to the expenses of maintaining or exploiting the coal on section 34 testified here to?

130 A. Yes sir.

Q. I show you the signature on complainant's exhibit "J," to the receipt, "received—San Francisco, January, 26—from C. J. Smith, receiver of the Oregon Improvement Company, $51 51-100. John L. Howard." Whose signature is that?

A. Mr. Howard's.

Q. That is the same Howard to whom you testified this morning?

A. It is.

Q. Mr. Whitworth, one question I overlooked in the examination this morning: What were the thicknesses of these veins of coal that you discovered on this land?

A. At the discovery point the thickness of the lower bench of the vein was some upwards of 12 feet; at the tunnel and slope it was a little over 8 feet; the vein opened in the quarter corner on the west of the section was 10 feet; the vein opened on section 33, near the northwest corner of 34, was over 6 feet between the walls, but near the center there was a band of about six inches of rock, sand rock.

Q. What is the nature of these veins as to being mixed with soil or gravel or other sediments?

A. They were comparatively free of foreign matter.

Q. How were they as to being regular or irregular?

A. As far as traced they showed regularity.

Cross-examination.

(Mr. SPOONER:)

Q. Mr. Whitworth, in 1897—that was before anybody had any homestead entry on this land, wasn't it?

A. Yes sir, I think so.

Q. (Continuing:) Your syndicate had whatever possessory claim there was to that then, did you not?

A. Yes sir.

Q. Did you own it, whatever interest you had, in equal shares among yourselves?

A. The Oregon Improvement Company had one-third and the rest of us—I had two-fifteenths, Mr. Maguire two-fifteenths, Mr. Smithers two-fifteenths, and Mr. Colman four-fifteenths. I think that makes it out.

131 Q. What business was Maguire in at that time?

A. At that time he was keeping a saloon near the southeast corner of this section.

Q. And what business were you engaged in at that particular time?

A. In 1897?

Q. Yes.

A. In civil engineering.

Q. Civil engineering?

A. In the city.

Q. Were you in business practicing your profession by yourself or with some one else?

A. Yes, by myself.

Q. You were not civil engineer for anything or anybody, but you were practicing generally, were you?

A. Yes sir. I may have been an engineer for some company simply——

Q. (Interrupting.) Well, it was not exclusive?

A. No sir.

Q. That is what I mean?

A. No sir.

Q. Were you successful as a civil engineer at that time, or not?

A. I made my living by it. Do you mean did I make much money?

Q. Yes, I mean how was your business then as compared with what it had been in '95 and '96?

A. I was doing fairly well.

Q. As well as then, or not?

A. Yes, I think so.

Q. As well as in 1894, 1893?

A. 1893 was a pretty hard year. I don't think I was doing very well.

Q. At that time, along in 1896 and 1897, you had—previous to that time, as I understand it, you and your associates had spent about $8,000 on this property?

A. Yes sir.

Q. Did you regard it as being a particularly valuable piece of coal land?

132 A. Yes sir.

Q. At that time?

A. Yes sir.

Q. Was there any reason at the time for you to let go of it?

A. Why, except that—to get money out of it.

Q. Then I want to know why you wrote in this letter here as follows: "Don't you want to buy out some or all of our interest? Maguire and I would be glad to dispose of our share,—we each own two-fifteenths,—at a low price. I think Gilman and Smithers would also."

A. Because we had been carrying it for some time, and, to open a coal mine up, it costs a good deal of money, and didn't any of us have the ready money then to put in to open a mine, except Mr. Howard, for the company.

(Witness excused.)

C. J. SMITH, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

(Mr. TODD:)

Q. Mr. Smith, how many years were you general manager of the Oregon Improvement Company?

A. Well, in one position or another, about seven years.

Q. What years did that cover?

A. From 1891 to about 1898.

Q. What was the chief business of the Oregon Improvement Company during those years?

A. Well, railroad, steamship, coal.

Q. What was the extent of its coal holdings and operations at that time?

A. Well, they owned the Franklin and Newcastle mines.

Q. Those were the only mines that they owned at that time, were they not?

A. Yes.

Q. Mr. Smith, at the time you purchased this land from the homesteaders, what position did you occupy with the Washington Securities Company?

A. The Washington Securities Company was not formed at that time, it was just in process of being formed.

Q. It was in process of being formed?

133 A. Yes.

Q. And you purchased this land for the corporation which was to be formed, did you not?

A. Yes.

Q. And with its funds?

A. Yes sir.

Q. What position did you hold in the Washington Securities Company upon its organization?

A. Vice president.

Q. What other position—were you one of the trustees or directors?

A. Yes.

Q. Were you one of the original promoters of the company?

A. Well, I subscribed to the stock at the beginning, at the formation of the company.

Q. Did you interest the corporation in this particular piece of property?

A. Well, I brought it to their attention, yes.

Q. And you are still and at the time you deeded the property over to the company you were the vice president and one of the trustees?

A. Yes sir.

Q. And you had bought it solely for the use of the corporation which was afterwards to be formed?

A. Yes.

Q. During the time you were connected with the Oregon Improvement Company did you visit the Franklin mine from time to time?

A. Yes sir.

Q. How often would you say?

A. Well, I don't remember; whenever it was necessary.

Q. Once a month?

A. Well, it was—the periods were too irregular.

Q. The Oregon Improvement Company owned the railroad that ran up there at that time?

A. Yes sir.

Mr. TODD: That is all.

The WITNESS: Columbia & Puget Sound.

134 Cross-examination:

(Mr. SPOONER:)

Q. Mr. Smith, he asked you whether or not you brought to the attention of the Washington Securities Company this piece of property. In what way did you bring it to its attention and in what way was it brought to yours?

A. A man——

Mr. TODD (interrupting): I object to that form of the question which asks him what way it was brought to Mr. Smith's attention, as that is not proper cross-examination.

The MASTER: Let him answer.

A. A man by the name of Braggs came to me and told me he had some coal land, wanted to know if I was interested in coal, and I asked him where the land was. He told me it was in section 34, township 22, seven, I think it was, and I told him that I was not, that I didn't believe that I cared to be interested, and he asked me if there was anybody that he could obtain as a purchaser, that he had an option on the land. I referred him to C. R. Collins, who at that time was hunting for some coal land with the expectation of getting coal that would be adaptable for gas purposes. He had some negotiations with Mr. Collins and Mr. Collins came to me and said that he would take it if I would take an interest, which I declined to do; and Mr. Collins took it up with some people in the east, and, not obtaining the necessary funds, told Mr. Braggs that he was unable to carry out his plans; and Braggs came back to me again, and in the meantime the Washington Securities Company was about to be formed and their stock was then being subscribed, and I referred Mr. Braggs to the Securities Company. He had a talk with Mr. Clise, who expected to be the president of the company and who was promoting it—forming it, and Mr. Clise discussed the question with me and Mr. Braggs, and I told him that—I gave him the name of an engineer—mining engineer, that would exploit the land, that is, would make examination, and that I knew nothing personally about the land myself but would rely upon a report that this man would make; and, at my suggestion, the man was employed to go there and
135 look the land over. After he had looked it over the matter of purchase was taken up between myself and Mr. Braggs and an option was taken for a sufficient length of time to enable us to verify the report of the engineer, and, upon the verification of those reports and the abstract of title, the land was purchased.

Redirect examination.

(Mr. TODD:)

Q. You then bought the—you and the company then bought the land for coal land?

A. Yes, after the examination had been made, the report was satisfactory.

(Witness excused.)

The further hearing of this matter was continued to some time to be agreed upon by the Master and respective counsel.

DECEMBER 8TH, 1909—2 o'clock p. m.

Continuation of proceedings pursuant to agreement.
All parties present as at former hearing.

LAWRENCE J. COLMAN, produced as a witness in behalf of complainant, being first duly cautioned and sworn, testifies as follows:

Mr. TODD:

Q. Please state your name?
A. Lawrence J. Colman.
Q. Where do you reside, Mr. Colman?
A. 716 Fourth Avenue.
Q. In Seattle?
A. In the city of Seattle.
Q. How long have you lived in the city of Seattle?
A. Since 1872.
Q. What experience have you had in coal mines, or any kind of mines?
A. Six years—six years' experience in coal mines.
Q. Where was that?
A. Principally in Cedar Mountain Coal Mine.
Q. What years were those?
A. From 1884—it was eight years—from 1884 to 1892.
Q. What was your experience in the Cedar Mountain Mine?
A. The character?
Q. Yes, the character of your experience?
136 A. Well, assistant manager, you might describe it, and also engineer, that is, I did the civil engineering.
Q. You were a civil engineer by profession?
A. No; I never engaged in it; only I took a civil engineering course in the university here.
Q. Did you receive a degree?
A. No.
Q. Did you ever have occasion to examine other coal properties than that at Cedar Mountain?
A. Yes.
Q. Did you ever examine section 34 township 22 north range 7 east Willamette Meridian?
A. Yes sir.
Q. When was that?
A. I have some notes here with me that were taken.
Q. Are those notes you made at the time of the examination?
A. Those are the notes (producing notes).

Q. When was the examination made?
A. February 16, 1892.
Q. Did you make your examination alone; do you remember?
A. No. In company with F. H. Whitworth.
Q. What parts of the section did you examine?
A. I went all around the section, and over a large portion of it.
Q. Just state what the topography of the section is, as to being level or hilly?
A. Well, I went around the section, because the outer portions of the section are more nearly on the level; the central portion is quite high.
Q. How high?
A. I never measured it.
Q. Can you approximate it?
A. Well, I should say from eight hundred to a thousand feet, but it would be quite a guess; I never have been on the top of it.
Q. What is the character of the land, as to being timbered or otherwise?
A. Quite heavily timbered in places.
Q. Had it been logged off at that time?
137 A. No.
Q. Is it valuable for logging purposes?
A. Portions of it would be.
Q. Do you remember what portions of the section?
A. I should say the northeast quarter possibly, had the heaviest timber.
Q. What was the agricultural character of the land, of the whole section?

Mr. SPOONER: I object to that as incompetent and he has not attempted yet to show any qualifications in this witness to state the agricultural character of the land.
(Objection overruled. Exception noted for respondent.)

A. The east half of the east half is what is known as upper bottom. There was considerable bottom on that and, I should judge, would be quite desirable for agriculture.
Q. What about the rest of the section?
A. The rest of it would be very much less so.
Q. What is the character of the soil, did you notice that?
A. In two or three places along where excavations were made in searching for coal, it was a yellow loam, outside of this bottom place that I spoke of.
Q. Did you find any evidences of coal on the land?
A. Yes sir.
Q. What evidences did you find?
A. At the south quarter section I saw coal in its natural position.
Q. You mean that it was on the southeast quarter?
A. No, the south quarter section post.
Q. The south quarter section post?

A. Yes; and at a point about 810 feet, the notes here show; at a point 810 feet easterly and about 400 feet northerly there was an opening made into the coal vein.

Q. What was the evidence of coal at the south quarter section post?

A. Just a prospect hole excavated down to the coal and cut through to show the depth of the vein.

Q. At what other points on the section did you find coal, besides the two you mentioned, if at all?

A. Only one other place.

138 Q. Where was that?

A. The northeast corner of the southwest quarter.

Q. What evidence was there there?

A. Well, there were men working there. We had men working there at that time, and there was a perpendicular pit and probably from fifteen to twenty feet of tunnel.

Q. Did you examine the coal, to ascertain also its quality?

A. I had it analyzed.

Q. What was the result of the analysis?

A. Of what vein?

Q. Well, just describe the results from the different veins?

A. I have a copy here of the analysis made from three points. In the northwest corner of the southeast quarter, that is the last described prospect, the analysis by J. M. Dowley of this city was —shall I give it?

Q. Yes.

A. Moisture 4 per cent, volatile matter 33 per cent, fixed carbon 48 per cent, ash 14.21, sulphur .75 of one per cent.

Q. What did the analysis show of the coal taken from the other two places?

Q. The coal taken from the west half of the east half of the section near the south line, by the same party; analyzed, moisture 2.05—2 per cent and the .05 of 2 per cent; combustible matter 33.06, fixed carbon 51.01, ash 13.42 and sulphur .46 of one per cent.

Q. Was any analysis made of any coal taken near the quarter post, or was that the one to which you referred?

A. This is from the main tunnel, about 800 feet from the quarter post.

Q. Was there any other test made besides those two?

A. There was one more, but that was from coal taken on section 33, 400 feet from this.

Q. That is not the tunnel that was being sunk into section 33, in the direction of section 34, on the northwest quarter of it—was that coal of the same character?

A. No; it is quite a little different.

Q. Just state what the test showed on that coal?

A. 5.51 per cent moisture, 38.03 combustible matter, 43.03 fixed carbon, 13 per cent ash and .43 of one per cent sulphur.

139 Q. Did you make any examination to determine the position of the different veins of coal on the land?

A. Yes sir.

Q. What did you find from that examination?

A. This vein that is in section 33, taking into consideration the dip and the strike, would run under this high hill in the center portion of this section 34.

Q. Did you ascertain the thickness of that vein?

A. Yes; I have a cross section of it here.

Q. What does it show, as to the thickness of the vein?

A. 64 inches of coal and nine and one half of shale and slate.

Q. Did you ascertain the thickness of the vein at the south quarter post?

A. Yes. Right here I have that cross section.

Q And what is it?

A. I have taken two or three cross sections. They vary slightly. This one, taken at the face of the gangway at this date, showed 84 inches of coal and two and three fourths inches of sandrock shale—clay partings.

Q. Did you measure any other veins on the section?

A. These in the northeast corner of the southwest quarter, I did.

Q. What was the size of that vein?

A. Ninety-one and one half inches of coal and thirty inches of sandrock and bone and clay.

Q. Were those veins which you mentioned all different veins of coal, or do they run into each other, in your opinion?

Mr. SPOONER: I object to that as incompetent and something which no one can possibly tell from the investigation which Mr. Colman says he made there.

Mr. TODD: I am asking him for his opinion upon it from the examination he made.

The MASTER: The objection is overruled.

(Exception noted for respondent.)

A. Well, the cross sections are so different that there is very little likelihood of their being on the same vein. The strike and dip that they had would not lead one to believe that they were the same.

140 Q. From the examination which you made, state from your experience as a coal mining man, whether there was coal on the land in sufficient quantities to pay for mining it?

Mr. SPOONER: This is also objected to as incompetent.

(Objection overruled. Exception noted for respondent.)

A. Will you repeat the question, please.

Q. From the examination which you made, state, from your experience as a coal mining man, whether there was coal on the land in sufficient quantities to pay for mining it?

A. I think there was.

Q. From your examination of the section which you made, state from your experience, whether in your opinion, the land was more valuable for mining, timber or agricultural purposes?

Mr. SPOONER: I object to that as incompetent. Mr. Colman was put on here and asked as to his qualifications as a coal mining man and he gave them. Now, that is not all that is necessary in order to answer this question.

(Objection overruled. Exception noted for respondent.)

A. I should say more valuable for mining.

Q. Have you had experience in timber; have you purchased or owned any timber land?

A. A limited amount.

Q. Have you ever cruised any timber?

A. Not officially, only for my own purposes.

Q. Not officially?

A. Well, I am not an expert in timber.

Q. For what purpose, in your opinion, is this section most valuable?

A. For mining; for a coal mine.

Q. Can you state how valuable it was for mining purposes, in your opinion, that is whether you consider it good coal land, or otherwise?

A. On the evidence of having coal in considerable qualities as shown by the excavations at the three points.

Q. Besides those excavations were there any outcrippings of coal on the land?

A. I saw none. There is a great deal of deposit over the whole surface. There is no place that I know of on the land that the natural rock crops out.

141 Q. How long prior to your examination on that section had you known of it and its character?

A. Ten years.

Q. What had you understood the character of the land to be?

Mr. SPOONER: I object to that as irrelevant, immaterial and hearsay.

(Objection sustained.)

Q. What kind of land had you known it as, during those ten years.

Mr. SPOONER: We make the same objection.

Mr. TODD: The allegation in the bill is that this land was known to be coal land.

(Objection overruled. Exception noted for respondent.)

A. We had been dealing with it and paying for this prospect work upon it as coal land during that period.

Q. You had been on the land previous to your examination of 1882?

A. But once before.

Q. Do you remember what year that was?

A. It was only a short time; I have forgotten, but it was less than a year before that.

Q. When did you first hear of this land as coal land; do you remember?

A. Between 1880 and 1882.

Q. You had not then been upon the land?

A. I had not.

Q. You were interested in other coal lands at that time?

A. No, I was working for a company that was, and so I knew of it.

Q. I understood you to say that the east half of the east half is bottom land, and in your opinion is agricultural land?

A. I think it is good agricultural land.

Q. Did you find any evidences of coal upon that part of the section?

A. No.

Q. From your examination of the veins on other parts of the section, could you determine whether there was coal on the east half of the east half?

142 A. We judged there was. The other portion would not be valuable for coal unless the coal should be in large enough deposit to go under the whole section.

Q. In your opinion then, from your examination, there was coal under the east half of the east half?

A. I should say there was. We found coal at one point at the center of the section and then 800 feet towards the east half of the east half, which would be about 500 feet from that line. No one can tell what happened in that 500 feet, but there was 800 feet of the line that there was coal, in that direction.

Q. What was the dip of the different veins which you examined?

A. The vein in the southern portion of the west half of the east half, at the face of the tunnel it was 23 degrees pitch, and the strike varied—the opportunity to determine the strike was limited, but it was very nearly east and west.

Q. The dip was 23 degrees, which way?

A. North.

Q. That is, it dipped down towards the north?

A. Yes.

Q. Could you tell what direction it ran towards the east, or did it continue?

A. It ran within two degrees of east and west—the strike.

Q. And dip was twenty-three degrees towards the north?

A. The dip was twenty-three degrees towards the north and the strike was within two degrees of east and west.

Q. And what was the dip of the other veins; the dip and strike I mean?

A. The vein in the northwest corner of the southeast quarter—a rough estimate of the strike was northwest, but the portion to check this from was so limited that I would not consider that very reliable.

Q. Did you ascertain the dip of that vein?

A. The dip was between three and seven degrees. It was quite flat at that point, towards the north.

Q. The vein over on the west of the section line?

A. I have that accurately here. The dip varied from thirty to

thirty-seven degrees at different portions of the places tested,
143 towards the northeast; and the strike was southeast; it was south sixty-seven and a half degrees.

Q. How long were you in making that examination of the section, in 1892?

A. I think a portion of three days.

Q. And Mr. Whitworth was with you during that time?

A. He was.

Cross-examination.

(Mr. SPOONER:)

Q. Mr. Colman, is it a fair statement to say, as summing up your testimony along the line I am speaking of, that from what you saw there you considered it a good coal prospect—it was not a mine yet, was it?

A. It was not a mine.

Q. From what you say had been opened up and what you saw there, it was a good prospect, is that right?

A. I think any mine is a prospect until it is producing profitably.

Q. Don't you make this distinction between a mine and a prospect: that a mine is where the prospecting stage has been past, and where a certain amount of ore has been shown to be sufficient to fix it as a remunerative thing, to some respect, and the prospective something which is merely indicative, isn't that it—isn't that a fair distinction?

A. Well, that is due to the equation of the individual and his hopefulness. I consider two of the veins were so distinctly hopeful that it was worth going ahead on. I think the other vein had not been developed at that time. The vein in the northeast corner of the southwest quarter was merely a prospect.

Q. Is it not a fair statement to say that the one you spoke of last was merely a fair prospect, and the others were better prospects—neither was a mine?

A. Neither of them was a coal mine.

Q. Neither of them was a mine—now, your statement which I understood you to give as your opinion, as to this section being more valuable for coal mining than for any other purpose, is based upon your opinion of the probability that the prospects would turn
144 out to be mines, isn't it; that is, you would not state, would you, positively, as your opinion, that the section was more valuable for coal mining purposes than for any other purpose, based merely upon the strength of what coal you saw there; but it is on the theory that the probability is, if the prospects develop into mines, it would be worth while to open them up?

A. Of course, no human being can absolutely swear that there is coal where he has not seen it, but that is the only way a coal mine is developed.

Q. How about my statement; is it not a fair statement of the effect of your testimony; your opinion. I say, that this *this* section was more valuable for mining than any other purpose, is based upon

the probability, in your opinion, that these prospects would turn out to be mines?

A. Certainly.

Q. When did you cease to have any interest—I do not mean sentimental interest, but any other interest—any material interest—in this section?

A. Well, I haven't the date; it was after going up there, when we met with more resistance than we felt we wanted to fight against, and the land office here did not give us the protection that we thought we ought to have.

Q. Were you interested in it at the time it became a question whether you could get it for coal purposes, or these homesteaders could get it for homestead purposes?

A. Yes.

Q. Mr. Sidney Williams stated that some effort was made on your part—not you personally but those people you were associated with—in the way of a contest to get this for coal purposes, and that it was turned down by the land office here; is that right?

A. Yes.

Q. What was the nature of that effort that was made to convince the Government Land Office here that it should not be obtained for homestead purposes, but was properly coal mining land, as you remember it?

A. I am not familiar with the details of that. Mr. Whitworth really handled it. I went up there at the time we were forced off—I was personally on the land.

145 Q. You know there was a showing made before the Land Office here, as against those homesteaders?

A. I am not sure to what extent that was—there was some legal proceedings in the county.

Q. There was some showing?

A. I am not prepared to say.

Q. I understood you to say that the Land Office did not give you the assistance you thought you should have had?

A. Yes; and yet personally I do not know; that is only through Mr. Whitworth. You would have to take his testimony as to what extent that was.

Redirect examination.

(Mr. TODD:)

Q. When you say that neither of those holes in the ground were coal mines; please explain what you wish to be understood as meaning as a coal mine?

A. A coal mine is a mine that is producing coal.

Mr. SPOONER: I object to that as improper.

(Objection overruled.)

A. (Continuing:) —producing coal for use.

(Witness excused.)

L. S. BROCKWAY, produced as a witness on behalf of respondent, being first duly cautioned and sworn, testified as follows:

(Mr. SPOONER:)

Q. State your name in full, Mr. Brockway.
A. L. S. Brockway.
Q. What is your business?
A. Secretary of the Washintgon Securities Company.
Q. You went up to this section 34 with some of our witnesses, didn't you?
A. I did.
Q. Do you remember the date?
A. The 26th of October and the 18th of November.
Q. At which time did you go up with Mr. Harrington and Mr. Beal?
A. The 18th of November.
Q. Whom did you have with you besides those gentlemen?
A. I had no one at that time—having been up there be-
146 fore.
Q. Were you acquainted with the directions?
A. Yes.
Q. Did you find the section corner post?
A. Yes.
Q. —which indicated your land?
A. I did.
Q. You had a compass with you?
A. I did, yes sir.

(Witness temporarily excused from the stand.)

L. C. BEAL, JR., produced as a witness on behalf of respondent, being first duly cautioned and sworn, testified as follows:

(Mr. SPOONER:)

Q. State your full name?
A. L. C. Beal, Jr.
Q. Where do you live?
A. Vashon, King County, Washington.
Q. How long have you lived there?
A. Between ten and eleven years.
Q. What business are you engaged in?
A. Florist and gardening.
Q. How long have you been engaged in that business or anywhere else?
A. I have been in that business a little over ten years here and I was raised on a farm in the east, in Maryland.
Q. What if any farming experience had you had previous to going to Vashon?
A. I was on a farm in Maryland, I was raised, and, like all the boys on a farm, I had to work until I was about fifteen or sixteen years old, and then I was in the general mercantile business for seven or eight years.

Q. Have you ever examined section 34, township 22 north range 7 east?

A. Yes sir, parts of it.

Q. I wish you would state what is the nature of the soil from your examination and your experience, what is the nature of the soil of that section, so far as you have examined it, and for what purposes it is suited?

147 A. Why, the parts that I noticed were the southeasterly portion. It seemed to be a sandy loam, and gravelly loam, and parts of it clay soil, where I could tell it; and that kind of soil is generally very good for fruit raising and also for stock raising.

Q. What would you say, from your examination of the section or so much of it as you examined, as to its suitability for agricultural purposes?

A. Very good.

Cross-examination.

(Mr. Todd:)

Q. Mr. Beal, was the part of the land you examined cleared?

A. No, it was not cleared; there was several tracts that was cleared.

Q. The part that you examined was covered with what kind of growth?

A. It is what we would term a second growth fir, and some vine maple and some of the soft maple. What I mean by second growth—the trees were small and from the evidences there seemed to be a burn over there a great many years ago; that was the reason I call it a second growth.

Q. The land is not cultivated now?

A. Oh, no, no.

Q. It would be valuable for what kind of crops, in your opinion?

A. Why, for fruits and, of course I don't know anything about whether it would raise grain—of course it would raise grain if it was cleared, but west of the mountains we don't raise very much grain. I think it would be very good for grass and the like of that.

Q. What business are you now engaged in?

A. In the florist and gardening.

Q. With Mr. Harrington?

A. Yes; I have greenhouses on Vashon.

Q. Your gardens are over at Vashon Island?

A. Yes; we run a farm in connection with the green houses.

Q. Are you familiar with land values, for the purposes which you mention that this land is suitable for?

148 A. Somewhat, not very much.

Q. Land, in the condition that that land now is, at the distance from Seattle that that land is now, covered with the growth that that land now is covered with, is, in your opinion, worth how much an acre?

A. I could not say, because I am not familiar with the values at that distance.

Q. You are only familiar with the values of land that is cleared near Seattle?

A. I know the condition of land near Seattle—land in that condition of the same quality on Vashon Island would be worth anywhere from sixty to one hundred dollars an acre, and one hundred and fifty, according to the location.

Mr. SPOONER: There is one question that I want to ask the witness.

Q. State what, if any, suitability it has for gardening purposes, such as truck gardening?

A. That lowland there, if there is a market close by, that lowland there, from all appearances, would be very good for truck gardening.

(Mr. TODD:)

Q. That land, for gardening purposes, would not be nearly so valuable as the land on the Vashon Island in the same condition?

A. Well, if it was in the same position.

Q. I mean, at that distance from Seattle?

A. No, not at that distance, I should not think so, unless there was a local demand.

(Witness excused.)

C. M. HARRINGTON, produced as a witness on behalf of respondent, being first duly cautioned and sworn, testified as follows:

Mr. SPOONER:

Q. State your name in full?

A. C. M. Harrington.

Q. Your are in the florist business?

A. No sir.

Q. What is your business?

A. Farming.

Q. On Vashon Island?

149 A. Yes sir.

Q. How long have you been in the farming business here and elsewhere?

A. Ever since I was old enough to work, practically, I have been identified with the soil ever since then, with short exceptions.

Q. Have you examined section 34, township 22, north range 7 east?

A. Portions of it.

Q. You were up there at the same time Mr. Beal was?

A. Yes sir.

Q. From the examination you made, I wish you would state what, if any, suitability that land has for agricultural purposes, and for what agricultural purposes, if any?

A. Well, I think it is fine agricultural land.

Q. State what elements you take into consideration in arriving at that conclusion?

A. Soil and climatic conditions?

Q. What evidences are there on the land which lead you to draw that conclusion?

A. The appearance of the soil and the growth on the land.

Q. What is the nature of the growth which helped you in arriving at your conclusion?

A. Why, vine maple and soft maple and scattering ash, and once in a while cedar and spruce.

Q. What is the significance of that?

A. You never see those growths on poor land; you never see the maple growing on poor land.

Q. I would like to ask you whether or not there was anything in the contour or topography of the section which would make it inherently unfit for agricultural purposes?

A. Only a small portion.

Cross-examination.

(Mr. Todd:)

Q. What portions of the section did you examine, Mr. Harrington?

A. We examined the southern and the eastern.

150 Q. Was your attention called to the hill there known as Sugarloaf?

A. Yes sir.

Q. Which direction from that did you make your examination?

A. South and east.

Q. How near did you approach the summit of that hill?

A. Oh, I should judge, perhaps, one third of a mile or something like that.

Q. You examined it until the rise became more precipitous?

A. No sir.

Q. You examined only the low land then?

A. We examined some of the higher lands but we did not examine Sugarloaf Mountain.

Q. And over to the west of the mountain you did not examine?

A. Yes.

Q. You did examine to the west of it?

A. Yes.

Q. And to the south of it?

A. It was south and west.

Q. And east?

A. Yes.

Q. You came in on the east side of that, didn't you, on the trail?

A. We came in on the southeast; we came in at the section corner, that is, southeast of the mountain.

Q. What portion of the 640 acres comprised in that section, would you say that you examined?

A. Well, I was in a position to form a pretty good opinion of probably about three quarters of the section.

Q. Did you go on the northwest quarter of the section?

A. No sir.

Q. Did you go on the northeast quarter of the section?
A. I was where I could see it, where I could overlook it.
Q. You did not go on it—you did not step on the land?
A. No sir.
Q. You only went on the southwest and southeast quarters of the section—actually went on them, I mean?
151 A. I was where I could see it, in a position to form an opinion of more than that southwest and southeast.
Q. What I want to know is what you actually went on; it was only on those two quarter sections, wasn't it?
A. Well, that would be all that we actually set our feet on, but as far as forming an opinion of its agricultural value, I know by the growth on the land without going on it that there was no particular change in the character of the land.
Q. The whole section was covered with this soft maple and the other kind of maple which you described?
A. In a lesser degree on the high land, but still there was maple on the high land.
Q. You were up there on November the 18th?
A. Yes, I think that was the time.
Q. What time did you get up there?
A. A little after twelve.
Q. What time did you start back?
A. At 5:10, I think it was, practically.
Q. That is, you caught the train at 5:10?
A. Yes.
Q. And the train got up there at noon?
A. Yes, practically noon.
Q. Did you spend all the time between trains on that section?
A. Nearly all the time.
Q. You are familiar with the value of the land in this county for agricultural purposes, are you not?
A. You mean commercial value?
Q. I mean the market value?
A. Well, I would not want to say that I was qualified to go out and assess land, or anything like that.
Q. You know in a general way what values are?
A. I know something of it.
Q. You know what the value is of that character of land on Vashon Island?
A. Yes sir.
Q. What is the value of land for agricultural purposes, of that character, on Vashon Island where you live?
152 A. That would depend a great deal on its location on Vashon Island.
Q. Do you mean its accessibility to the waterfront?
A. Yes sir, somewhat, and the view.
Q. I mean, for agricultural purposes without any view; what is land worth over on Vashon Island of the same character as this land which you have described?
A. About seven or eight hundred dollars an acre.

Q. For agricultural purposes, on Vashon Island?
A. Yes sir.
Q. Will you pay that much for land on Vashon Island?
A. No sir.
Q. How much is that land which you viewed worth an acre for agricultural purposes?
A. At the present time?
Q. Yes.
A. I don't know.
Q. Is it worth as much as land on Vashon Island?
A. Indeed no.

(Witness excused.)

H. HARRINGTON, produced as a witness on behalf of respondent, being first duly cautioned and sworn, testified as follows:

(Mr. SPOONER:)

Q. Mr. Harrington, you are in business as a florist?
A. Yes sir, I am interested in it.
Q. What experience have you had, if any, which would fit you to judge of the suitability of land and soil for agricultural purposes?
A. Well, I am fifty-eight years old and I have always worked on the soil, farming. Of course we had lots of green houses in later years, but we had quite a farm connected with it; but I was brought up on a farm and have always been—well I have been in the greenhouse business thirty years but at the same time I have always had farming land outside.
Q. You examined this section 34 that is concerned in this suit?
A. Yes sir.
153 Q. I wish you would state to what extent you examined it and what, if any, suitability for agricultural purposes you found it to have?
A. Well, I went over the same ground that the rest of them did, that has been discussed here. We were together, and as far as I went—as far as I could see I found it was excellent ground.
Q. You found it was excellent ground?
A. Excellent ground, away above the average of the land that is under cultivation in this state.

Cross-examination.

(Mr. TODD:)

Q. Mr. Harrington who just testified is your brother?
A. Yes sir.
Q. You went on the same portions of the land he did?
A. Yes sir.
Q. And you went up there and came back the same afternoon, about five?
A. Yes sir.
Q. You did not go over the whole section by any means?

A. No, no, it was too hard a tramp.

Mr. SPOONER: I want to ask another question:

Q. You have heard your brother's testimony?
A. I am a little deaf; I heard some of it.
Q. I want to know what, in a general way, is the growth on that land?
A. Well, it is very peculiar. It is a second growth, and there is no first growth stumps except occasionally one that is left. I can't hardly account for it, and there is no down timber there.
Q. What is the nature of the trees; what are the trees on it?
A. Well, the second growth I spoke of, is fir, and there is quite a great deal of maple and soft maple and vine maple.
Q. What, if any, effect upon your conclusion as to the suitability of the soil for agricultural purposes, does the presence of those maples on the land have?
A. It shows the character of the soil.
154 Q. Were you able to judge of the character of the soil on that portion which you did not go on, by the presence of the growth which you saw on it?
A. I was able to judge of about three quarters of the section. We went up the railroad going north and we could see that the land continued on practically the same level. Of course we did not go at all on what I would say would be the northwest quarter of the section, but I got a good view of it—that was the highest land—we didn't go there.

(Witness excused.)

L. S. BROCKWAY, recalled in behalf of respondent, testifies:

(Mr. SPOONER:)

Q. At one of the times when you went up on this section, you took with you a photographer for the purpose of having some photographs taken, didn't you?
A. I did.
Q. Have you seen the photographs since they were taken?
A. I have.
Q. I want to hand you this photograph here and I will ask you what it is a photograph of?
A. That is a photograph of the southwest quarter known as the Barbee clearing.
Q. I wish you would state whether or not, from your knowledge, that is or is not a reasonably correct representation of what it purports to represent?
A. Yes sir, it is.

Photograph identified by the witness is marked "respondent's identification No. 1."

Q. I now wish you would examine all of these photographs and then state what they are representations of, mentioning each one separately so that the reporter can identify them?

Mr. TODD: I would like to ask a question first.

Q. These photographs were taken last October?
A. They were, yes sir.
Q. Was Mr. Starkey with you at the time, the witness who previously testified for the complainant?
A. Yes sir.
Q. And he pointed out those places to you as being the different places they are represented to be?
155 A. Yes sir.

Mr. TODD: That is all.
Mr. SPOONER: Go on.

A. This marked "identification number 2" is the west half of the east half. This marked "identification No. 3" is the east half of the east half. This marked "identification No. 4" is the east half of the east half from another view. This marked "Identification No. 5" is a picture of the mountain taken from the southeast corner of the section. This marked "Identification No. 6" is the northwest quarter. And this marked "Identification No. 7" is the same quarter from another position, and this marked "Identification No. 8" is the mountain from the northwest quarter.
Q. Mr. Brockway, are those photographs, from your knowledge of what they are photographs of, reasonably accurate representations of what they purport to show?
A. Yes; although I do not think they show the clearings as large as they are.

(Witness excused.)

C. J. SMITH; recalled on behalf of respondent, testified as follows:

(Mr. SPOONER:)

Q. Mr. Smith, I would like to ask you, as far as you recollect, what is the first date, or substantially the first date you ever heard of this section that is involved in this litigation?
A. Either in the latter part of 1890 or the beginning of 1891, I do not remember which.
Q. At that time you were with the Oregon Improvement Company?
A. Yes sir.
Q. What was the date of your purchase of this section for the Washington Securities Company?
A. I think it was in 1906.
Q. I would like to ask you what knowledge, if any, you had during the time you were connected with the Oregon Improvement Company, of the character of this section?
A. I had no personal knowledge whatever.
Q. I would like to ask you whether or not at the time,
156 between the time you left the Oregon Improvement Company and the time you were first approached upon the subject of buying this section, whether or not you had acquired any information as to the character of this section?

A. I had not.

Q. I believe you testified when Mr. Todd had you on the stand, if I am not mistaken, the circumstances under which you bought it; that is, as I remember it, you spoke of and detailed your being approached by a man who represented these homesteaders, didn't you?

A. Yes sir, Mr. Brooks.

Q. Up to the time you were approached by the representative of these homesteaders with the view of selling this land, I would like to ask you whether or not you knew that it had been taken up as a homestead or in any other way?

A. I did not.

Q. About how long before the actual purchase was made by you, were you first approached about it?

A. I should say six months—three months, probably. Mr. Brooks came to me and stated he had an option, and wanted me to interest myself in the matter, and I refused at that time to do; I declined to take any interest in it, but I directed him to Mr. Collins who had been looking for coal lands. He had some talk with Mr. Collins. Mr. Collins came to me and stated that if the land could be examined and found to be coal land and I would take an interest with him that he would take up the land. I declined at that time to do it. And a month or something of that sort elapsed, I do not remember how long, and Mr. Brooks came to me and told me that Mr. Collins had given it up, and his option was about to expire, and in the meantime this Washington Securities Company had been virtually formed—the formation of it had been virtually agreed upon, but the organization had not been perfected, and I referred him to the Washington Securities Company, and on the discussion of the matter with the president of the company at that time, he agreed to look into the matter if I would have an examination made of the property and see whether there was any coal on it,
157 and I sent a man up there who spent some considerable time looking over the property and making the examination, and it was upon his report that the president of the company agreed to purchase it, but the company not being formed at that time, he requested that I take the title in my name and transfer it to the company when the legal organization of the company was perfected.

Q. So far as any information that the company had of the character of this land, it was the same information, or lack of it, which you had?

A. I could not find anything—I had no knowledge of any information at the hands of the company that indicated the value of the property. The only information I had was a letter from the former manager of the company, who was then located in San Francisco.

Q. You are speaking of the Oregon Improvement Company now?

A. Yes sir.

Q. I am speaking of the Washington Securities Company.

A. They had no knowledge whatever.

Q. Your knowledge was their knowledge?

A. Yes, that is all, and their knowledge was largely that which was acquired from the report.

Cross-examination.

(Mr. TODD:)

Q. When you say you had no personal knowledge of the character of the land during the time you were manager of the Oregon Improvement Company, you mean you never had been on the land?

A. I never had been on the land and I never had any reports of its value.

Q. You, as manager of the company, paid the expenses for keeping up the coal declaratory statements on it?

A. We did, indirectly. The reports were made to Mr. Howard in San Francisco, and at the request of the president we refunded him that money, in order to have, if possible, any information there might be connected with the land. There was not in the office of the company, according to my recollection, and report or
158 anything that indicated the value of the land, and, within my recollection, that is as far as I recollect, there was nothing in Mr. Howard's office, because I have an indistinct recollection of his writing up and asking if some one would make a report on it before he went ahead with any more expenses.

Q. You were paying the expenses on it then as coal land though?

A. Yes, we were refunding to him the expense—a portion of the expense that he was paying for some people exploring and locating our land—I don't know what they were doing in fact.

Q. Mr. Howard's interest, presumably, were in trust for the Oregon Improvement Company?

A. I assume so.

Q. When you purchased the land you had an abstract of title brought down and examined?

A. I had an abstract, yes sir.

Q. By your attorney, or the attorney of the company?

A. By the attorney of the company.

Q. Who paid for the examination of the abstract?

A. The company.

Q. And that attorney was one of the directors of the company, was he not?

A. I don't know.

Q. You do not remember what attorney examined it?

A. H. R. Clise.

Q. Is he not one of the officers, and was he not the first secretary of the Washington Securities Company?

A. I do not remember. No, I do not think he was. I am not sure about that.

Redirect examination.

(Mr. SPOONER:)

Q. Did you have any understanding or knowledge, and if so, what was it, as to the reason why any interest in these annual pay-

ments was taken, or the declaratory statements etc. were made by the company—that is, with regard to whether or not it was
159 on the theory that it was a valuable thing, or something that they did not want to let go until they found out?

A. Before paying the first bill of these expenses that came to me—I was manager of the company and Mr. Elijah Smith was president—my remembrance is that he was here at the time—I referred the bill to him, and there being no information with reference to the section, and the section being unsurveyed government land, no possibility of obtaining any title except by purchase, the question was discussed between us as to whether it was worth while to pay any expenses or to notify Mr. Howard that he would not continue any further with the expenses; and it was requested of me to continue the expense on account of the possibility of information that it might give us with reference to coal in that section of the country, or that particular locality.

Q. They finally ceased paying even the small amounts that they were paying, didn't they?

A. Well, I knew nothing about it. The matter was left practically with Mr. Howard and I knew nothing about it, and no examination was made of it up here, and to tell you the truth, we didn't think anything of it.

Q. It was started before you had anything to do with it, wasn't it?

A. Yes sir.

Q. When you came in the office there you found it there?

A. Yes.

Q. And your knowledge of it consisted simply of what you picked up as you have described?

A. Yes. The toleration of that which already existed.

Q. I would like you to state whether or not any information, even the little which you have mentioned here—what if any effect it had on your mind at the time Brooks approached you on the subject of purchasing the property for the Washington Securities Company. Did you know that it was the same section?

A. He informed me it was section 34, located near Kanascott and he asked whether I knew about it, and I told him no, and he went on to describe then its location with reference to other mines there beyond Franklin and within the range of Kangley and
160 Drum and Alta and some other pieces of property that had been more or less exploited in that part of the country, and I told him then that I had an indistinct remembrance that that had been brought to my attention some years before, but that, I had never seen any report or examination of it, I was not aware of the value of it, and I did not know whether it was coal or not, and I did not care to go any further with it, that was as to myself personally. When the company was formed I referred it to them and they desired first an examination. Upon that examination they made their purchase.

Q. Was the examination made, based in any way upon what you have stated existed away back in '90 and '91?

A. No sir; in fact I did not know there were tunnels on the property.

Q. How is that?

A. In fact I did not know whether there were any tunnels or open prospects on the property, or that there ever had been.

Q. When did you first find that out?

A. When the examination was made they took some—the expert took some men with him, and in looking over the ground they uncovered some prospect holes and dug out some tunnel that had been more or less filled with water and debris.

Q. I wish you would state whether or not, from the report that you had from the men whom you sent there and from such other knowledge you had, whether or not that property, as coal property, is anything more at the present time than a prospect?

A. Well; no, it is a probability. It could not be determined as a mine, and in fact I was loath, even after the report was made, to take hold of it until I had secured some additional information with reference to a rock dyke that runs fairly close to that property up there, and which, in my opinion, is the reason why one of the contiguous pieces of coal property was worthless. The rock dyke having practically coked the coal in the mine, and rendered it entirely worthless.

Q. That was a matter that was found out later—what mine was that in?

161 A. That was the Kangley mine.

Q. That was a matter that was found out, and could only have been found out after considerable work was done and money expended?

A. There was one hundred and fifty thousand dollars and more spent on that property before it was abandoned.

Q. I would like to ask you whether or not, from the information you have, it is certain at the present time—whether it is certain that that dyke does or does not extend into this property?

A. Well, I satisfied myself thoroughly well that it did not; that is, that it did not reach this property.

Q. I understood, from your examination by Mr. Todd, that you stated at the time you and I went up there, that was the first time you had even been on the property?

A. Yes sir.

Q. That was this fall?

A. Yes sir.

Q. You saw considerable of the property at that time, didn't you?

A. Yes sir.

Q. I wish you would state to the court, whether or not there is anything about the topography of the section, as you saw it, and the nature of the ground and the growth of timber etc., as you saw it, which would indicate that it is mining property; only fit for mining purposes and unfit for all other purposes?

A. No. I could not tell that. There is some very good bottom land there, and there is some pretty fair timber; and the land itself

is not such as, from the mere superficial glance at it, you would say was mining land. As to the qualifications between coal and agricultural; it is pretty hard to tell. Section 8, about four miles from there, has five different croppings of coal within twelve or thirteen hundred feet of each other, and those croppings, after having had $40,000 expended upon them, turned out to be what is known as a syncline, which was in the nature of an inverted V—the coal running down a small distance and coming up again, making two croppings on the surface and having practically no body of coal,
162 although the outer croppings would indicate an enormously valuable piece of coal.

Q. I would like to ask you if you know whether the timber on that property has any value?

A. Yes. The timber has value. We have had one or two requests to buy the timber. I do not know how much there is, because I never had it cruised.

Q. You heard Mr. Colman's testimony, didn't you?

A. Yes sir.

Q. Do you remember it, calling your attention to his testimony in which he showed the different strikes of the three veins that he mentioned?

A. Yes.

Q. I would like to ask you, from your experience in connection with coal lands and coal mines such as you had, what, if any, conclusion can be drawn as to the extent and character of the veins, from the strikes that he describes there?

A. Well, it would indicate a very troubled condition and an abnormal condition. He has a strike on one vein east and west; the next vein he has the strike northwest and the dip of the vein he has running—one 23 degrees and one about 7 degrees and one from 30 to 35 degrees, which would indicate, in all possibility, so far as the seven degree vein is concerned, that it might be a slip that had been carried down, carrying the coal with it, until it more or less flattened out, and that it was not in place, and his other indications are either wrong, or else the coal there is in a troubled condition, because the strike does not come around in any way which would indicate any regular curve, or one that would leave the coal in, what you might call, a regular or fixed condition.

Recross-examination.

(Mr. Todd:)

Q. Is the timber on this land second growth, Mr. Smith?

A. Yes, very largely, except the cedar. The cedar is fairly good size.

Q. Has the fir been logged off?

A. I do not see any indications of any logging on the section at all.

163 Q. Well, this may be the first growth of timber then, of a small size?

A. Yes. It is rather a peculiar second. I never saw very many like it.

Q. Does the timber grow large along the railroad there?

A. Well, occasional trees; generally speaking, the trees are small, what you might call poles.

Q. You have dealt with other timber in that township, haven't you?

A. I think it is in the township above.

Q. That is larger timber, farther north?

A. Yes.

Q. And it is a great deal more valuable than the timber on this section?

A. Yes; the timber that is thick is really more valuable, because it takes a less amount of roads to log it.

Q. What expert did you have examine this coal land?

A. Mr. Hawkins.

Q. Did his examination show the same thing as to strikes, that Mr. Colman's examination did?

A. No sir.

Q. Did he examine the same veins that Mr. Colman did?

A. Well, I cannot tell you whether he examined the same veins. I do not bear in mind now the cross-section of his veins, but the dip and strike of his veins were not in accordance with Mr. Colman's testimony.

(Mr. SPOONER:)

Q. Where is Mr. Hawkins?

A. I don't know. He is a civil engineer and I am inclined to think he is out doing some work for one of these railroad companies at the present time.

Q. In this state or in Alaska?

A. In this state. He has been in Alaska but he has just returned lately, and I think he is out now for the Milwaukee Road doing some engineering work.

Mr. SPOONER: I will now offer all these photographs that were identified by Mr. Brockway, as exhibits in this case.

Photographs received in evidence without objection and marked respondent's exhibits "1", "2", "3", "4", "5", "6", "7"
164 and "8".

Mr. SPOONER: Mr. Todd, it seems to me that it would be a wise thing, from the standpoint of both parties, if we had a decent map or plat of this land. Now, with that exception, our testimony is finished, but I would suggest that we get a map made and we can just simply agree upon that and put it in later.

Mr. TODD: What do you want shown on the map?

Mr. SPOONER: I want some of the surrounding sections, and this section shown in a proper way. It may be that your map is exactly right, but I would like to have a little larger map and a better one so that it could be used by both of us in arguing the case.

Mr. TODD: I do not see any objection to that.

Mr. SPOONER: Then, we will consider our testimony closed, with the exception that we will try to agree upon some plat and we will put it in.

Mr. TODD: All right.

DECEMBER 14, 1909—10 o'clock, a. m.

Continuation of proceedings pursuant to agreement.

C. J. SMITH, recalled on behalf of the defendant, testifies as follows:

By Mr. SPOONER:

Q. Mr. Smith, what do you know about the height of the hill or mountain known as Sugar Loaf?

A. I think it is between four and five hundred feet high.

Q. Do you have any information other than your own observation?

A. The engineer I sent up there reported it to be something over four hundred feet by barometric reading.

(Testimony of witness closed.)

Whereupon all parties rest and the testimony is closed.

UNITED STATES OF AMERICA,
Western District of Washington, Northern Division, ss:

I, the undersigned, United States Master in Chancery for the United States Circuit Court, Western District of Washington, Northern Division, do hereby certify: That by stipulation between the parties pursuant to the order of reference made herein, the proofs and testimony of the respective parties to this action were taken before me at my office in the Federal Building, in the City of Seattle and State of Washington, within the said Western District of Washington and Northern Division, beginning on the 14th day of October, 1909, and being adjourned from day to day and time to time thereafter to suit the convenience of the respective parties, their solicitors and witnesses, occupying in all three days in taking the same, and closing on the Fourteenth day of December, 1909; and that the foregoing typewritten transcript, comprising 204 pages, constitutes the whole of the testimony taken in said cause on behalf of plaintiff and defendant; that the papers, books and documents marked respectively as plaintiff's echibits "A" to "J", and defendant's exhibits "1" to "8", all inclusive, were duly offered in evidence before me as such Master in Chancery and are returned and filed herewith as exhibits on behalf of said respective parties, as a part of the proofs and testimony in said cause; that the reading of the depositions to or by the witnesses and the signatures of the various witnesses to the depositions respectively were by said witnesses and by the solicitors for the respective parties to said cause duly and expressly waived, and

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I do hereby certify that the amount of the Master in Chancery fees, including the fees of the stenographers, is $240.50, paid as follows: By plaintiff $174.05, and by defendant $66.45.

All of which is respectfully submitted.

ROGER S. GREENE,
United States Master in Chancery for the Western District of Washington, Northern Division.

Endorsed: Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910, A. Reeves Ayres, Clerk, W. D. Covington, Deputy.

166 COMPLAINANT'S EXHIBIT "A."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 2, 1908.

I hereby certify that the annexed copies pages 1 to 22 inclusive, papers in H. E. No. 18603 C. C. E. No. 20278 Robert L. Barbee Seattle, Wash., land district are true and literal exemplifications from the originals in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOHN O'CONNELL,
Acting Recorder of the General Land Office.

Application No. 18603.

Homestead.

LAND OFFICE AT SEATTLE, WN.,
Dec. 31, 1902.

I, Robert L. Barbee, of Ravensdale, Wn., do hereby apply to enter under Section 2289, Revised Statutes of the United States, the SW¼ of Section 34, in Township 22 N. of Range 7 E., containing 160 acres, at 2.50 per acre.

ROBERT L. BARBEE.

LAND OFFICE AT SEATTLE, WASH.,
Dec. 31*st*, 1902.

I, J. Henry Smith, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. HENRY SMITH, *Register.*

Receiver's Receipt, No. 18603. Application, No. 18603.

Endorsed: No. 18603. Homestead Application. Seattle, Wash. Robert L. Barbee. Dec. 31, 1902. Section 34, Town. 22 N. Range 7 E.

167 Homestead.

RECEIVER'S OFFICE, SEATTLE, WASHINGTON,
December 31*st*, 1902.

Received of Robert L. Barbee of Ravensdale, Wash., the sum of Twenty Two dollars; being the amount of fee and compensation of

Register and Receiver for the entry of SW¼ of Section 34 in Township 22 N. of Range 7 East, W. M., under Section No. 2209, Revised Statutes of the United States.

160 acres at $2.50 acre.

$22.00.

LYMAN B. ANDREWS, *Receiver.*

Homestead Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WN., *Dec.* 31, 1902.

I, Robert L. Barbee, of Ravensdale, Wn., having filed my application No. 18603, for an entry under section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am a native born citizen of the United States, above the age of twenty-one years, and a married man: that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire
168 from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

ROBERT L. BARBEE.

Sworn to and subscribed before me this 31 day of December, 1902, at my office at Seattle in King County, Wn.

J. HENRY SMITH, *Register.*

Non-Mineral Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WN., *Dec.* 31, 1902.

Robert L. Barbee, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the SW¼, Sec. 34, Tp. 22 N., R. 7 E.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the
169 purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is Ravensbale, Wn.

ROBERT L. BARBEE.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant (or has been satisfactorily identified before me by E. C. Eglin), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, W'n, within the Seattle land district, on this 31 day of Dec., 1902.

J. HENRY SMITH, *Register.*

Receiver's Receipt, No. 18603. Application, No. 18603.

Homestead.

Receiver's Office.

SEATTLE, WASHINGTON, *December* 31*st*, 1902.

Received of Robert L. Barbee, of Ravensdale, Wash., the sum of Twenty-Two dollars; being the amount of fee and compensation of Register and Receiver for the entry of SW¼ of Section 34, in Township 22 N. of Range 7 East, W. M., under Section No. 2290, Revised Statutes of the United States.

160 acres at $2.50 acre.

$22.00

LYMAN B. ANDREWS, *Receiver.*

Notice for Publication.

DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT SEATTLE, WASH.,
Feb'y 13th, 1904.

Notice is hereby given that the following-named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before Register and Receiver at Seattle, Wash., on March 30th, 1904, viz:

170 Robert L. Barbee, for the SW¼ Sec. 34, Tp. 22 N., R. 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

Zachariah Turner, of Palmer, Wash.; John Dickson, of Palmer, Wash.; Peter Brown, of Kanasket, Wash.; Anthony Fitch, of Kanasket, Wash.

J. HENRY SMITH, *Register.*

Affidavit of Publication.

STATE OF WASHINGTON,
County of King, ss:

Jos. A. McMillan being sworn, says he is the Manager of the Enumclaw Courier a weekly newspaper printed and published at Enumclaw in King County, State of Washington; that it is a newspaper of general circulation in said County and State, and that the annexed notice was published in said newspaper and not in a supplement thereof, and is a true copy of the notice as it was printed and published once in each week in the regular and entire issue of said paper for a period of 5 consecutive weeks, commencing on the 19 day of Feb'y, 1904, and ending on the 18 day of March, 1904, and that said newspaper was regularly published and distributed to its subscribers during all of said period, and that such notice was published in said paper in each and every issue during said period.

JOS. McMILLAN.

Subscribed and sworn to before me this 19 day of March, 1904.

[SEAL.] W. F. ECKHART,
Notary Public in and for the State of Washington Residing in Enumclaw.

Notice for Publication.

LAND OFFICE AT SEATTLE, WASH.,
February 13, 1904.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his
171 claim, and that the said proof will be made before the Register and Receiver at Seattle, Wash., on March 30, 1904, viz:
Hobert L. Barbee, for the SW¼, Sec. 34, Tp. 22 N., R. 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

Zachariah Turner and John Dickson of Palmer, Wash., and Peter Brown and Anthony Fetch of Kanaskat, Wash.

J. HENRY SMITH, *Register.*

Homestead.

LAND OFFICE AT SEATTLE, WASH.,
Feb'y 13*th*, 1904.

I, Robert L. Barbee, of Kanasket, King Co. W'n, who made Homestead Application No. 18603 for the SW¼, Sec. 34, Tp. 22 N., R. 7 E., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before the Reg'r & Rec'r at Seattle, Wash., on M'ch 30th, 1904, by two of the following witnesses:

Zachariah Turner, of Palmer, Wash.; John Dickson, of Palmer, Wash.; Peter Brown, of Kanaskat, Wash.; Anthony Fitch, of Kanaskat, Wash.

ROBERT L. BARBEE.

LAND OFFICE AT SEATTLE, WASH.,
Feb'y 16*th*, 1904.

Notice of the above application will be published in the Courier, printed at Enumclaw, Wash., which I hereby designate as the newspaper published nearest the land described in said application.

J. HENRY SMITH, *Register.*

172 *Certificate as to Posting of Notice.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE AT SEATTLE, WASH.,
Mar. 30, 1904.

I, J. Henry Smith, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 13th day of Feb., 1904.

J. HENRY SMITH, *Register.*

In the United States District Land Office, Seattle, Washington.

STATE OF WASHINGTON,
County of King, ss:

Anthony Fitch, being first duly sworn, upon his oath deposes and says: That he is the identical person advertised as one of the witnesses in support of the final proof of Robert L. Barbee for the SW¼ of Sec. 34, Tp. 22 N., R. 7 E., W. M.; that there is a mistake in the advertised notice in the spelling of affiant's Sir name; that it

is spelt "Fetch" instead of "Fitch," but that this affiant is the identical person intended as a witness in said cause.

ANTHONY FITCH.

Subscribed and sworn to before me this 30th day of March, 1904.

LYMAN B. ANDREWS, *Receiver.*

United States District Land Office, Seattle, Washington.

In re Homestead Entry of Robert L. Barbee.

STATE OF WASHINGTON,
County of King, ss:

Robert L. Barbee, of the County and State aforesaid, being first duly sworn, upon his oath deposes and says: That he is the
173 identical person who made Homestead Entry for the SW¼ of Sec. 34, Tp. 22 N., R. 7 E., W. M., and who has advertised to make final proof for said tract of land on this the 30th day of March, 1904; affiant further states that the Editor who published the notice of final proof for this affiant has made a clerical error in the Christian name of this affiant, inasmuch as said Editor has made it "Hobart L. Barbee" instead of "Robert L. Barbee," changing the "R" in Robert to "H;" that this affiant is the identical person intended as mentioned in said notice, and the identical person who made Homestead Entry for said tract of land.

ROBERT L. BARBEE.

Subscribed and sworn to before me this 30th day of March, 1904.

LYMAN B. ANDREWS, *Receiver.*

Affidavit Required of Claimant.

I, Robert L. Barbee, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 18603, made upon the SW¼ section 34, township 22 N. range 7 E., do solem-ly swear that I made settlement upon said land in November, 1901, and that since such date, to-wit, on the 15th day of May, 1903, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated 1½ acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ROBERT L. BARBEE.

Subscribed and sworn to before me this 30th day of March, 1904, at my office at Seattle, in King County, Washington.

LYMAN B. ANDREWS, *Receiver.*

174 *Non-Mineral Affidavit.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASHINGTON, *March* 30, 1904.

Robert L. Barbee, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the SW¼ Sec. 34, Tsp. 22 N., R. 7 E.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Kanaskat, Wash.

ROBERT L. BARBEE.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Washington, within the Seattle, Washington, land district, on this 30th day of March, 1904.

LYMAN B. ANDREWS, *Receiver.*

175 *Homestead Proof—Testimony of Witness.*

ANTHONY FITCH, being called as witness in support of the Homestead entry of Robert L. Barbee for SW. ¼ Sec. 34, Tsp. 22 N. R. 7 E., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Anothy Fitch, 43 years, Kanaskat, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Agricultural land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Claimant settled prior to May, 1903. I do not know the date and cannot be more exact. He established his residence in May, 1903. I hauled in his provisions and material for a house at that time.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Claimant is married having three children and wife. Claimant and family have resided continuously on the land since establishing residence.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not more than a week, to my knowledge, since settlement in periods of a day or two.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 4 acres cultivated and has raised one crop.

176 Ques. 9. What improvements are on the land, and what is their value?

Ans. A story and a half house of four rooms, shed, barn, chicken coop, out house, 4 acres cultivated, Total value $800.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None to my knowledge.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think that he is.

ANTHONY FITCH.

I Hereby Certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 30th day of March, 1904, at my office at Seattle, in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Witness.

JOHN DICKSON, being called as witness in support of the Homestead entry of Robert L. Barbee for SW. ¼ Sec. 34, Tsp. 22 N., R. 7 E., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. John Dickson, 82 years, Palmer, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—
177 whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. Farming land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Claimant settled and established residence over fifteen months ago.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Claimant and his family have resided on the land continuously.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not more than a day or two in a month, when he would have work a short distance from the land.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 1½ acres and has raised crops one season.

Ques. 9. What improvements are on the land, and what is their value?

Ans. A story and half house, barn, shed, chicken house, 1½ acres cultivated. Total value: $1,000.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think

the settler has acted in entire good faith in perfecting this entry?
Ans. I am not. I think that he is acting in good faith.

JOHN DICKSON.

178 I Hereby Certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 30th day of March, 1904, at my office at Seattle, in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Claimant.

ROBERT L. BARBEE, being called as a witness in his own behalf in support of homestead entry, No. 18603, for final comm. Proof, testifies as follows:

Ques. 1. What is you- name, age, and post-office address?
Ans. Robert L. Barbee, 37 years, Kanaskat, Wash.
Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?
Ans. I am. Born in Missouri.
Ques. 3. Are you the identical person who made homestead entry, No. 18603, at the Seattle, Wash., land office on the 31st day of December, 1902, and what is the true description of the land now claimed by you?
Ans. I am. SW. ¼ Sec. 34, Tsp. 22 N., R. 7 E.
Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)
Ans. I built my first house in March, 1901, and took up residence at that time. The second house I built in May, 1903.
Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)
Ans. I am married, family consist of wife and three children. I have resided continuously on land since establishing residence.
Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?
Ans. For the last fifteen months I have not been absent a day. Prior to that I have not been absent more than a week or so
179 in every two months, during which time my family would remain on the land.
Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?
Ans. About 1½ acres cultivated and have raised two crops.
Ques. 8. Is your present claim within the limits of an incor-

porated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Timbered farming land.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None to my knowledge.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have not.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim. (If so, describe the same, and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. I have made none.

ROBERT L. BARBEE.

I Hereby Certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before
180 me this 30th day of March, 1904 at my office at Seattle, in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Robert L. Barbee, having made a Homestead entry of the S.W. ¼ Section No. 34, in Township No. 22 N. of Range No. 7 E., subject to entry at Seattle, Wash., under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since November, 1901, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected

or abandoned an entry made under the homestead laws of the United States.

ROBERT L. BARBEE.

I, L. B. Andrews, Receiver of U. S. Land Office, do hereby certify that the above affidavit was subscribed and sworn to before me this 30th lay of March, 1904, at my office at Seattle, in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Indorsed. Homestead Proof. Approved: J. Henry Smith, Register. Lyman B. Andrews, Receiver.

No. 20278. RECEIVER'S OFFICE AT SEATTLE, WASHINGTON, *March* 30, 1904.

Received from Robert L. Barbee, of Kanaskat, of King County, Washington, the sum of four hundred dollars; being in
181 full for the SW. ¼ of Section No. 34, in Township No. 22 N., of Range No. 7 E., containing 160 acres, at $2.50 per acre.

$400.00. LYMAN B. ANDREWS, *Receiver.*
Com. H'd No. 18603.

$1.50 testimony fee received. Number of written words, 665. Rate per 100 words, 22½ cents.
No. 20278.

LAND OFFICE AT SEATTLE, WASHINGTON, *March 30th*, 1904.

It is hereby certified that, in pursuance of law, Robert L. Barbee, residing at Kanaskat, in King County, State of Washington, on this day purchased of the Register of this Office the SW¼ of Section No. 34, in Township No. 22 N., of Range No. 7 E. of the W. Principal Meridian, Wash., containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars, for which the said Robert L. Barbee has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Robert L. Barbee shall be entitled to receive a Patent for the lot above described.

J. HENRY SMITH, *Register.*

Endorsed: Complainant's Exhibit A. Cause No. 1706. U. S. Circ. Ct. Western Dist. of Wash., Northern Division. Filed Oct. 14, 1909. Roger S. Greene, Master.

Filed U. S. Circuit Court Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

COMPLAINANT'S EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 2, 1908.

I hereby certify that the annexed copies pages 1 to 27 inclusive, papers in H. E. No. 17996 C. C. E. No. 20103 of Thomas
182 B. Forsyth, Seattle, Wash., land district, and all related papers are true and literal exemplifications from the originals in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOHN O'CONNELL,
Acting Recorder of the General Land Office.

Application No. 17996.

Homestead.

LAND OFFICE AT SEATTLE, WASH.,
June 20*th*, 1901.

I, Thomas B. Forsyth, of South Prairie, Price Co., Wash., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the W½ NE¼ & W½ SE¼ of Section 34, in Township 22 N. of Range 7 E, containing 160 acres.

THOMAS B. FORSYTH.

LAND OFFICE AT SEATTLE, WASH.,
June 20*th*, 1901.

I, Edward P. Tremper, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

EDWARD P. TREMPER, *Register.*

Application No. 17996.

Homestead.

RECEIVER'S OFFICE, SEATTLE, WASH.,
June 20*th*, 1901.

Received of Thomas B. Forsyth, So. Prairie, Wn., the sum of Twenty-two dollars; being the amount of fee and compensation of Register and Receiver for the entry of W½ NE¼ and W½ SE¼ of Section 34 in Township 22 N. of Range 7 E, under Section No. 2290, Revised Statutes of the United States.

160.00 acres at 2.50.

$22.00. COLUMBUS T. TYLER, *Receiver.*

183 *Homestead Affidavit.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASH., *June 20th*, 1901.

I, Thomas B. Forsyth, of South Prairie, Wash., having filed my application No. 17996, for an entry under section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I have declared my intention to become a citizen of the United States, over 21 years of age & the head of a family. That his declaration of intention filed herewith states his names as Thomas Forsyth and that he is the person who made said declaration, that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, except..... and that I have not heretofore made any entry under the homestead laws, except for Lots 3, 5, SE¼ NW¼ & NW¼ SE¼ Sec. 13, Tp. 34 N., R. 9 E., dated Aug. 7, 1889, No. 12004, at Seattle
184 Land Office and relinquished voluntarily May 10, 1892, for reason wife could not live on said land & I derived no benefit whatever from my said entry or relinquishment.

THOMAS B. FORSYTH.

Sworn to and subscribed before me this 20th day of June, 1901, at my office at Seattle in King County, Wash.

COLUMBUS T. TYLER, *Receiver.*

Non-mineral Affidavit.

UNITED STATES LAND OFFICE,
SEATTLE, WASH., *June* 20, 1901.

Thomas B. Forsyth, being duly sworn according to law, deposes and says that he is the identical Thomas B. Forsyth who is an applicant for Government title to the W½ NE¼, W½ SE¼ of Sec. 34, Tp. 22 N., R. 7 E., that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his postoffice address is South Prairie, Price Co., Wash.

THOMAS B. FORSYTH.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by J. Y. Ostrander), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Wash., within the Seattle land district, on this 20th day of June, 1901.

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COLUMBUS T. TYLER, *Receiver.*

UNITED STATES OF AMERICA,
Territory of Washington,
Third Judicial District, ss:

I, Thomas Forsyth, do declare on oath that it is *bona fide* my intention to become a citizen of the United States of America; that I will support the Constitution and Government of the United States of America, the Organic Act and Laws of Washington Territory, and renounce forever all allegiance and fidelity to all and every foreign Prince, Potentate, State and Sovereignty whatsoever, and particularly to Victoria Queen of Great Britain & Ireland, whose subject I am; so help me God.

THOMAS FORSYTH.

Subscribed and sworn to before me this 25th day of July A. D., 1889.

R. M. HOPKINS, *Clerk.*

TERRITORY OF WASHINGTON,
County of King, ss:

I, R. M. Hopkins, Clerk of the District Court, Third Judicial District of Washington Territory, holding terms at Seattle, do hereby certify that I have compared the foregoing copy with the original Declaration of Intention of Thomas Forsyth to become a Citizen of the United States now of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said District Court this 25th day of July, 1889.

[SEAL.] R. M. HOPKINS, *Clerk.*

186 No. 1, Homestead.

LAND OFFICE AT SEATTLE, WASH.,
October 8th, 1903.

I, Thomas B. Forsythe, of Palmer, Wash., who made Homestead Application No. 17996 for the W. ½—E. ½, Sec. 34, Tp. 22 N., R. 7 E., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before Register & Receiver at Seattle, Wash. on Wed. Nov. 25th, 1903 by two of the following witnesses:

Zachariah Turner, of Palmer; Samuel Ritchie, of Palmer; John Gevin, of Palmer, Wash.; John Dixon, of Palmer, Wash.

THOMAS B. FORSYTH.

LAND OFFICE AT SEATTLE, WASH.,
Oct. 9th, 1903.

Notice of the above application will be published in the Courier printed at Enumclaw, Wash., which I hereby designate as the newspaper published nearest the land described in said application.

J. HENRY SMITH, *Register.*

Notice for Publication.

DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT SEATTLE, WASH.,
Oct. 9th, 1903.

Notice is hereby given that the following-named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before Register & Receiver at Seattle, Wash., on Wed. Nov. 25th, 1903, viz: Thomas B. Forsythe, for the W. ½ of E. ½, Sec. 34, Tp. 22 N., R. 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

Zachariah Turner, Samuel Ritche, John Gerin, John Dixon, all of Palmer, Wash.

J. HENRY SMITH, *Register.*

187 *Affidavit of Publication.*

STATE OF WASHINGTON,
County of King, ss:

D. C. Ashum being sworn, says he is the Editor of the Enumclaw Courier, a weekly newspaper printed and published at Enumclaw in King County, State of Washington; that it is a newspaper of general circulation in said County and State, and that the annexed notice of publication was published in said newspaper, and not in a supplement thereof, and is a true copy of the notice as it was printed and published once in each week in the regular and entire issue of said paper for a period of Six consecutive weeks, commencing on the 10 day of October, 1903, and ending on the 14 day of November, 1903, and that said newspaper was regularly published and distributed to its subscribers during all of said period, and that such notice was published in said paper in each and every issue during said period.

D. C. ASHUM.

Subscribed and sworn to before me this 25 day of Nov. 1903.
[SEAL.] W. F. ECKHART,
Notary Public in and for the State of Washington,
Residing in Enumclaw.

Notice for Publication.

LAND OFFICE AT SEATTLE, WASH., *Oct.* 9, 1903.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver at Seattle, Wash., on Wednesday Nov. 25, 1903: Thomas B. Forsythe, for the W. ½ of E. ½ Sec. 34, Tp. 22 N., R. 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: Zachariah Turner, Samuel Ritchie, John Gerin and John Dixon, all of Palmer, Wash.

J. HENRY SMITH, *Register.*

188 *Certificate as to Posting Notice.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE.
AT SEATTLE, WASHINGTON, *November 25th,* 1903.

I, J. Henry Smith, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 8th day of October, 1903.

J. HENRY SMITH, *Register.*

Affidavit Required of Claimant.

I, Thomas B. Forsythe, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 17996, made upon the W. ½ of E. ½ section 34 township 22 N. range 7 East, W. M., do solemnly swear that I made settlement upon said land on the 20th day of June, 1901, and that since such date, to-wit, on the 20th day of June, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated 4½ acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

THOMAS B. FORSYTH.

Subscribed and sworn to before me this 25th day of November, 1903, at my office at Seattle, in King County, Washington.

LYMAN B. ANDREWS *Receiver.*

STATE OF WASHINGTON,
County of King:

U. S. LAND OFFICE, SEATTLE, WASH.

Thomas B. Forsyth of the County and State aforesaid, being first duly sworn, deposes and says that he is the identical person who made Hd. Entry No. 17996, for the West half of the East half of Section thirty-four, Tp. 22 N., R. 7 E.

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That the Receiver's Receipt No. 17996 issued to affiant for said entry, has been destroyed by fire and this affiant can not produce the same, and affiant asks that this affidavit & statement be taken in lieu of said receipt.

THOMAS B. FORSYTH.

Subscribed and sworn to before me this 25th day of November, 1903.

LYMAN B. ANDREWS *Receiver.*

Non-Mineral Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASHINGTON, *November 25th*, 1903.

Thomas B. Forsyth, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the W. ½ of E. ½ of Sec. 34, Tsp. 22 N., R. 7 East, W. M., in King County, Washington; that he is well acquainted with the character of said described land, and with each and every

legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land,
190 but with the object of securing said land for agricultural purposes, and that his post-office address is Palmer, King County, Washington.

THOMAS B. FORSYTH.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by F. F. Randolph), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, within the Seattle, Wash. land district on this 25th day of November, 1903.

LYMAN B. ANDREWS, *Receiver.*

No. 37040.

AUDITOR'S OFFICE, KING COUNTY, WASHINGTON,
SEATTLE, 12/18, 1903.

To Thomas B. Forsyth, at Palmer, W'n:

Herewith Instrument No. 281,978 duly recorded.

Yours truly, GEO. B. LAMPING,
County Auditor.

O., *Deputy.*

Homestead Proof—Testimony of Witness.

SAMUEL RITCHIE, being called as witness in support of the Homestead entry of Thomas B. Forsyth for W. ½ of E. ½ of Sec. 34, Tsp. 22, R. 7 East, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Samuel Ritchie: age 46 years: post-office at Palmer, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or

selected site of a city or town, or used in any way for trade or business?

191 Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land. Clerk. Division C. Patented Aug. 3-1904. Recorded Vol. 146, is fit for farming and agricultural purposes.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. He settled there about the month of June, 1901, and after he completed a house he commenced to reside there with his family at that date.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Since the date he settled on this land and up to the present time he has had a continuous residence on this land.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent except while away attending to matters of business and getting provisions.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. He has about 3 acres of land in cultivation and has raised crops two seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. He has a house of two rooms, frame and logs, comfortable house; wood shed; fencing; orchard of about 15 fruit trees and small fruits; 3 acres cleared and about 1½ acres slashed; value about $500.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not to my knowledge.

192 Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I am satisfied that the entryman is acting in good faith with the Government in completing title to this land.

SAMUEL RITCHIE.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 25th day of November, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS *Receiver.*

Homestead Proof—Testimony of Witness.

JOHN DIXON, being called as witness in support of the Homestead entry of Thomas B. Forsyth for W. ½ of E. ½ of Sec. 34, T. 22 N., R. 7 E., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. John Dixon: age 81 years: post-office at Palmer, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Timbered farming land, such land when cleared of its timber is fit for farming and agricultural purposes.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Soon after filing during the month of June, 1901, he
193 completed his house and begun to reside there at that time with his family.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. To the best of my knowledge and belief he has had practically a continuous residence on this land: he has had no other home than the one he maintains on the land.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. To the best of my knowledge he has only been absent while out attending to matters of business and procuring provisions: I live within a short distance of the land and would know if there was anything to the contrary.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. He has about 2 to 2½ acres of land in cultivation and has raised crops during the past three seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. He has a house of two rooms, frame and logs, comfortable house: wood shed: orchard of about 15 to 20 fruit trees: small fruits: trails and roads: fencing: about 2½ acres cleared and 2½ acres slashed and partly burned off. Value of improvements about $500.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are,

and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not to my knowledge.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

194 Ans. I am. I am satisfied that he is acting in good faith in completing his proof for this land.

JOHN DICKSON.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 25th day of November, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Claimant.

THOMAS B. FORSYTH, being called as a witness in his own behalf in support of homestead entry, No. 17996, for W½ of E½ of Sec. 34, Tsp. 22 N., R. 7 East W. M., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Thomas B. Forsyth: age 58 years: post-office at Palmer, King County, Washington.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am a naturalized citizen of the United States and at the date I filed on this land on June 20th, 1901, I furnished evidence of having declared my intention.

Ques. 3. Are you the identical person who made homestead entry, No. 17996, at the Seattle land office on the 20th day of June, 1901, and what is the true description of the land now claimed by you?

Ans. I am: W½ of E½ of Sec. 34, Tsp. 22 N., R. 7 East, W. M., in King County, Washington.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. Immediately after filing on this land on the 20th day of June, 1901, I completed a house and commenced at that time to make my home on this tract of land. Statement of improvements: I have a house 17 x 15 feet, frame and logs, two rooms: wood shed: well of water: orchard of 14 fruit trees and small fruits: 300

195 feet of fencing besides the brush fencing: 400 feet of road: 3 acres of land cleared and about 1½ acres of land slashed: value of the improvements about $500.00.

Ques. 5. Of whom does your family consist; and have you and

your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. I am: wife and three children: After I completed my house I commenced to reside on the land with my family and have had a continuous residence on the land since that date.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Since I settled on the land my wife has had to be absent about 6 months of the time on account of sickness: I resided on the land all the time myself, being only absent while out getting provisions.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. I have about 3 acres of land in cultivation and have raised crops three seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. It is not.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. The land is timbered farming land, such land when the timber is removed is fit for farming and agricultural purposes.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not to my knowledge. I have made an effort to determine as to the minerals and coal and have found none.

196 Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have: I made homestead entry entry No. 12004, August 7, 1889, for the Lots 3 and 5, S. E. ¼ of N. W. ¼ and N. W. ¼ of S. E. ¼, Sec. 13, T. 34 N., R. 9 E.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. I have made no other entry since the year 1890: By reason of sickness in my family I was forced to give up the land I have above mentioned which tract cost me about $600.00, and for which relinquishment or loss I never received any benefit from.

THOMAS B. FORSYTH.

Statement of Improvements.

Statement of Improvements: I have a house 17 x 15 feet, frame and logs, two rooms; wood shed; well of water; orchard of 14 fruit trees and small fruits; 300 feet of fencing besides the brush fencing; 400 feet of road; 3 acres of land cleared and about 1½ acres of land slashed; value of the improvements about $500.00.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 25th day of November, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Thomas B. Forsyth, having made a Homestead entry of the W. ½ of E. ½ Section No. 34 in Township No. 22 N. of
197 Range No. 7 East, subject to entry at U. S. Land Office at Seattle, under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am naturalized a citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 20th day of June, 1901, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

THOMAS B. FORSYTH.

I, L. B. Andrews, Receiver, of U. S. Land Office at Seattle, Wash., do hereby certify that the above affidavit was subscribed and sworn to before me this 25th day of November, 1903, at my office at Seattle in King County, Washington.

LYMAN B. ANDREWS, *Receiver.*

Endorsed: T. B. Forsyth. Homestead Proof. Commuted. Land Office at Seattle, Washington. Original Application No. 17996. Approved: J. Henry Smith, Register; Lyman B. Andrews, Receiver. Proof submitted on November 25, 1903, and suspended by reason of the failure of the Publisher to furnish an affidavit of publication: money tendered: affidavit furnished to complete on this 27th day of Nov., 1903, and final papers issued.

LYMAN B. ANDREWS, *Receiver.*

No. 20103.

RECEIVER'S OFFICE AT SEATTLE, WASHINGTON,
November 27th, 1903.

Received from Thomas B. Forsyth of Palmer, of King County, Washington, the sum of Four hundred dollars; being in full for the W. ½ of E. ½ of Section No. 34, in Township No. 22 N., of Range No. 7 East, W. M., containing 160 acres, at $2.50 per acre. Commuted homestead entry No. 17996.
$400.00.

LYMAN B. ANDREWS, *Receiver.*

198 $1.50 testimony fee received. Number of written words, 665. Rate per 100 words 22½ cents.

No. 20103.

RECEIVER'S OFFICE AT SEATTLE, WASHINGTON,
November 27th, 1903.

Received from Thomas B. Forsyth of Palmer, of King County, Washington, the sum of Four hundred dollars; being in full for the W. ½ of E. ½ of Section No. 34, in Township No. 22 N., of Range No. 7 East, W. M., containing 160 acres, at $2.50 per acre. Commuted homestead entry No. 17996.
$400.00.

LYMAN B. ANDREWS, *Receiver.*

$1.50 testimony fee received. Number of written words, 665. Rate per 100 words 22½ cents.
281978.

Endorsed: Filed July 11-04. Copp & Luckett, City. Filed for record at request of Grantee, Dec. 9, 1903, at 12 min. past 10 A. M. and recorded in Vol. 5 of Patents page 489 Records of King County, Wash. Geo. B. Lamping, County Auditor. By Ellen S. Fish, Deputy.

No. 20103.

LAND OFFICE AT SEATTLE, WASHINGTON,
November 27th, 1903.

It is hereby certified that, in pursuance of law, Thomas B. Forsyth, residing at Palmer, in King County, State of Washington, on this day purchased of the Register of this Office the W. ½ of E. ½ of Section No. 34 in Township No. 22 N. of Range No. 7 East of the Will. Principal Meridian, Washington containing 160 acres, at the rate of Two dollar- and 50 cents per acre, amounting to Four hundred dollars, for which the said Thomas B. Forsyth has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this cer-

tificate to the Commissioner of the General Land Office, the
199 said Thomas B. Forsyth shall be entitled to receive a Patent for the lot above described.

J. HENRY SMITH, *Register.*

Endorsed: Duplicate filed. No. 20103. Cash Entry. Land Office at Seattle, Wash. Sec. 34, Town. 22 N., Range 7 E. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Div. C. List 23. Approved June 4, 1904 by C. M. S., Clerk. Division C. Patented Aug. 3-1904. Recorded Vol. 146, Page 92.

Copp & Luckett,

Attorneys at Law, Washington, D. C.

Pacific Building, 624 F Street, N. W.

Doc. No. Div.
Cash Ent. No. 20103.
Seattle Dist. Wash.
C. & L. No.

JUL. 11, 1904.

Hon. Commissioner of the General Land Office:

SIR: In the case of Thos. B. Forsyth involving W½ E½, Sec. 34, T. 22 N., R. 7 E., we hereby enter our appearance for said Forsyth.

Please notify us of all action.

Very respectfully,

COPP & LUCKETT.

Endorsed: U. S. General Land Office. Received Jul. 11, 1904. 123264. Copp & Luckett, Washington, D. C., Jul. 11, 1904. Enter appearance for Thos. B. Forsyth in matter of C. E. No. 20103. Seattle Land District, Wash.

Endorsed: Compl't's Exhibit B. Cause No. 1706. U. S. Circuit Court, West'n Dist. of Wash'n, N'n Div. Filed, Oct. 14, 1909. Roger S. Greene, Master, &c. Filed U. S. Circuit Court Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

200 COMPLAINANT'S EXHIBIT "C."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 2, 1908.

I hereby certify that the annexed copies pages 1 to 27 inclusive, papers in H. E. No. 18040, C. C. E. No. 19465 of Odin A. Olsen, Seattle, Wash., land district, and letter "C" dated August 20, 1903, are true and literal exemplifications from the originals in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOHN O'CONNELL.

Application No. 18040.

Homestead.

LAND OFFICE AT SEATTLE, WASH.,
Aug. 5, 1901.

I, Odin A. Olsen, of Palmer, King County, Wash., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the NW¼ of Section 34, in Township 22 N. of Range 7 E., containing 160 acres. $2.50.

ODIN A. OLSEN.

LAND OFFICE AT SEATTLE, WASH.,
Aug. 5th, 1901.

I, Edward P. Tremper, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior adverse right to the same.

EDWARD P. TREMPER, *Register.*

Indorsed: No. 18040. Homestead Application. Odin A. Olsen, Seattle, Wash. Aug. 5, 1901. Section 34, Town. 22 N., Range 7 E. 11-168 N. & E.

201 *Receiver's Receipt No.* 18040.

Application No. 18040.

Homestead.

RECEIVER'S OFFICE, SEATTLE, WASHINGTON,
August 5th, 1901.

Received of Odin A. Olsen, of Palmer, Washington, the sum of Twenty-Two dollars; being the amount of fee and compensation of Register and Receiver for the entry of NW¼ of Section 34 in Township 22 N. of Range 7 East, W. M., under Section No. 2290, Revised Statutes of the United States.

160 acres at $2.50 per acre.

$22.00. COLUMBUS T. TYLER, *Receiver.*

Homestead Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASH., *Aug. 5th*, 1901.

I, Odin A. Olsen, of Palmer, Wash., having filed my application No. 18040, for an entry under section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am over 21 years of age & a single man, and have declared my intention to become a citizen of the U. S.; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the
202 purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

ODIN A. OLSEN.

Sworn to and subscribed before me this 5 day of Aug., 1901, at my office at Seattle, in King County, Wash.

COLUMBUS T. TYLER, *Receiver.*

UNITED STATES OF AMERICA,
State of Washington,
County of Kittitas, ss:

I, Odin A. Olsen, do solemnly declare on oath that it is bona fide my intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to all and every foreign Prince, Potentate, State or Sovereignty whatever and particularly to Oscar II, King of Norway and Sweden, whereof I am now a citizen or subject.

And I do swear that I will support the Constitution and Government of the United States of America.

ODIN A. OLSEN.

Subscribed and sworn to before me this 15th day of November, A. D. 1889.

T. B. WRIGHT,
Clerk of Superior Court of Kittitas County, Wash.

STATE OF WASHINGTON,
County of Kittitas:

—, T. B. Wright, do hereby certify that the foregoing is a true and correct copy of the Original Declaration of Odin A. Olsen, an alien to become a citizen of the United States, as shown by the records of my office, in book 1, page 26.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Ellensburg, County of Kittitas, State aforesaid, on this 18th day of November, 1889.

[SEAL.] T. B. WRIGHT,
Clerk of Superior Court of Kittitas County, Wash.

U. S. LAND OFFICE,
SEATTLE, WASHINGTON, *August* 5, 1901.

I hereby certify that the foregoing is a true copy of the original Declaration of Intention of Odin A. Olsen to become a citizen of the United States as presented at this office.

EDWARD P. TREMPER, *Register.*

Non-Mineral Affidavit.

UNITED STATES LAND OFFICE,
SEATTLE, WASHINGTON, *Aug.* 5, 1901.

Odin A. Olsen, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the NW¼, Sec. 34, Tp. 22 N., R 7 E., that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any per-
204 son or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the

purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Palmer, Wash.

ODIN A. OLSEN.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me known (or has been satisfactorily identified before me by Jos. W. Gregory), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Wash., within the Seattle land district, on this 5th day of Aug., 1901.

COLUMBUS T. TYLER, *Receiver.*

Receiver's Receipt No. 18040.

Application No. 18040.

Homestead.

RECEIVER'S OFFICE, SEATTLE, WASHINGTON.
August 5th, 1901.

Received of Odin A. Olsen of Palmer, Washington, the sum of Twenty-Two dollars; being the amount of fee and compensation of Register and Receiver for the entry of NW¼ of Section 34, in Township 22 N. of Range 7 East, W. M., under Section 2290, Revised Statutes of the United States.

160 acres at $2.50 per acre.

$22.00. COLUMBUS T. TYLER, *Receiver.*

Notice for Publication.

LAND OFFICE AT SEATTLE, WASH.,
Feby. 25th, 1903.

Notice is hereby given that the following-named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before Register and Receiver
205 at Seattle, Wash., on May 6th, 1903, viz: Odin A. Olsen, of Palmer, Wash., for the NW¼, Sec. 34, Tp. 22 N., R. 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

William Henricks, of Palmer, Wash.; Zach Turner, of Palmer, Wash.; J. Sloss, of Palmer, Wash.; Robt. L. Barbee, of Kanascat, Wash.

J. HENRY SMITH, *Register.*

Notice for Publication.

DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT SEATTLE, WASH.,
February 25, 1903.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver at Seattle, Wash., on May 6, 1903, viz: Odin A. Olsen, of Palmer, Wash., for the NW¼, Sec. 34, Township 22 N. Range 7 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

William Heinricks of Palmer, Wash., Zack Turner of Palmer, Wash., J. Sloss of Palmer, Wash., Robert L. Barbee, of Kanaskat, Wash.

32-37.

J. HENRY SMITH, *Register.*

Affidavit of Publication.

STATE OF WASHINGTON,
County of King, ss:

D. C. Ashum, being first duly sworn, upon his oath deposes and says that he is the publisher of The Enumclaw Courier, a weekly newspaper, which, before and at the time herein stated and included, was printed and published in Enumclaw, in the county of King, state of Washington, once a week as a weekly newspaper, and was during all of said time of general circulation in said county
205 of King; and that the homestead notice, of which a printed copy is hereto attached, was published in full in said newspaper, and in every issue thereof, for six consecutive weeks, which said printed copy was always a precise counterpart and fac simile of the homestead notice so published, and that the date of first publication as aforesaid of said homestead notice was the 7 day of March, 1903, and the date of the last publication thereof was the 5th day of April, 1903.

D. C. ASHUM.

Second Affidavit.

Subscribed and sworn to before me this fifth day of May, 1903.

[SEAL.] W. F. ECKHART,
Notary Public in and for the State of Washington, Residing at Enumclaw.

Certificate as to Posting of Notice.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE
AT SEATTLE, WASHINGTON, *May* 6, 1903.

I, J. Henry Smith, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 25th day of Feb., 1903.

J. HENRY SMITH, *Register.*

No. 1—Homestead.

LAND OFFICE AT SEATTLE, WASH.,
Feb'y 25th, 1903.

I, Odin A. Olsen, of Palmer, Wash., who made Homestead Application No. 18040 for the NW¼ Sec. 34, Tp. 22 N., R. 7 E., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before Register and Receiver at Seattle, Wash., on May 6th, 1903, by two of the following witnesses:
207 William Henricks, of Palmer, Wash.; Zach Turner, of Palmer, Wash.; J. Sloss, of Palmer, Wash.; Robert L. Barbee, of Kanaskat, Wash.

ODIN A. OLSEN.

LAND OFFICE AT SEATTLE, WASH.,
Feb'y 26th, 1903.

Notice of the above application will be published in the Courier, printed at Enumclaw, Wash., which I hereby designate as the newspaper published nearest the land described in said application.

J. HENRY SMITH, *Register.*

Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Odin A. Olsen, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 18040, made upon the NW¼ section 34, township 22 N. Range 7 E., do solemnly swear that I made settlement upon said land on the 15th day of August, 1901, and that since such date, to-wit, on the 15th day of August, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated one acre of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ODIN A. OLSEN.

Subscribed and sworn to before me this 6th day of May, 1903, at my office at Seattle, in King County, Washington.

LYMAN B. ANDREWS, *Receiver.*

208 *Non-Mineral Affidavit.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASHINGTON, *May* 6, 1903.

Odin A. Olsen, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the NW¼ Sec. 34, Tsp. 22 N., R. 7 E; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Palmer, Wash.

ODIN A. OLSEN.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Washington, within the Seattle, Washington land district, on this 6th day of May, 1903.

LYMAN B. ANDREWS, *Receiver.*

209 Before the Commissioner of the General Land Office.

In the Matter of C. E. No. 19465, Seattle, Wash., of Odin A. Olsen.

Supplemental Proof.

STATE OF WASHINGTON,
County of ——, *ss:*

Robt. L. Barbee and J. Sloss being duly sworn, say that they are the identical persons of the above names who were examined as final proof witnesses on the commutation proof of Odin A. Olsen when he made the above described cash entry. Affiants say that in giving their testimony for the claimant, Olsen, as to his residence, improvements, and other acts of compliance with the homestead law, they referred to acts and improvements by Olsen done and made upon the NW¼, Sec. 34, T. 22 N., R. 7 E., in the Seattle Land District, and not elsewhere, and that all the statements made by them in their final proof testimony are true as to the above described land.

ROBT. L. BARBEE.
JAMES SLOSS.

Subscribed and sworn to before me this 9 day of September, 1904.

ZACH TURNER,
Justice of the Peace, State of Washington,
Durham Precinct.

STATE OF WASHINGTON,
County of King, ss:

I, Geo. B. Lamping, Auditor of King County, State of Washington, and legal custodian of the election records thereof hereby certify that Zach Turner, Esquire, the person subscribing the annexed Proof and before whom the same was taken, was at the date thereof, to-wit: Sep. 9 A. D., 1904, *was* and is now a duly elected, qualified and acting Justice of the Peace in and for Durham Precinct in said King County; that by virtue of his said office he is authorized to take acknowledgments and administer oaths, and that full faith and credit are and ought to be given all his official acts as such Justice of the Peace; and I further certify, that I am acquainted
210 with the handwriting of the said Zach Turner and verily believe the name subscribed to the said annexed instrument is his proper and genuine signature.

Witness my hand and official seal this 12th day of September A. D. 1904.

[SEAL.]

GEO. B. LAMPING,
Auditor of King County, Washington,
By L. T. McGUIRE, *Deputy.*

Homestead Proof—Testimony of Witness.

J. SLOSS, being called as witness in support of the Homestead entry of Odin A. Olsen for final comm. proof, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. J. Sloss: 55 years: Palmer, Wash., form. Ravensdale, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. Generally good agricultural land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. He settled and established residence in August, 1901.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Claimant is unmarried. He has resided thereon continuously.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what pur-
211 pose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not more than a day or so each month to bring in food and supplies from Ravensdale, Wash.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. Has cultivated one acre. Has raised crops two seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. A one room house of sawed lumber, shingled and sealed, a barn, a well, 600 yds. road, 1½ A. slashed, 1 A. cultivated, 225 yds. fence. Total value: $700.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None to my knowledge.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. He has not.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I am sure that he is.

J. SLOSS.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 6th day of May, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Witness.

ROBERT L. BARBEE, being called as witness in support of the Homestead entry of Odin A. Olsen for final comm. proof, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Robert L. Barbee; 37 years; Durham, Wash.

Ques. 2. Are you well acquainted with the claimant in
212 this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. It is good farming land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Claimant settled and established residence about August, 1901.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Claimant is unmarried. He has resided thereon continuously *thereon.*

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has been absent one or two days a month to get in supplies.

Ques. 8. How much of the homestead has the settler cultivated; and for how many seasons did he raise crops thereon?

Ans. He has cultivated 1 A. *cultivated.* He has raised crops 2 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. A house, shingled, sealed and papered, a barn, 1½ slashes,
225 yds. fence, 600 yds. road, garden, well. Total value; $700.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they
213 are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None as far as I could ascertain.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. No.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think that he has.

ROBERT L. BARBEE.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 6th day of May, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Claimant.

ODIN O. OLSEN, being called as a witness in his own behalf in support of homestead entry, No. 18040, for final commutation proof, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Odin A. Olsen: 42 years: Palmer, Wash.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I have declared my intention to become a citizen, evidence of which will be found with H. E. No. 18040.

Ques. 3. Are you the identical person who made homestead entry, No. 18040, at the Seattle, Wash., land office on the fifth day of August, 1901, and what is the true description of the land now claimed by you?

Ans. I am. NW¼, Sec. 34, Tsp. 22 N., R. 7 E.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. My house was built and actual residence established
214 in August, 1901. The improvements consist of a one room house of sawed lumber, a barn, one acre cultivated, one and half acre slashed, 600 yds. road, fences and a small garden. Total value $700.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. I am unmarried. I have resided on the land continuously.

Ques. 6. For what period or periods have you been absent from the homestead since making settlements, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Not more than forty-five days in all. One or two days a month to bring in provisions, etc.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. ½ acre, 1st year. 1 acre 2nd year. Have raised crops 2 seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. It is not.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. It is agricultural land.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None to my knowledge.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. I have not.

215 Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. I have not.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing not mineral), made by you since August 30, 1890.

Ans. I have made none.

ODIN ANGEL OLSEN.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 6th day of May, 1903, at my office at Seattle in King County, Washington.

LYMAN B. ANDREWS, *Receiver.*

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Odin A. Olsen, having made a Homestead entry of the NW¼ Section No. 34 in Township No. 22 N of Range No. 7 E, subject to entry at Seattle, Wash., under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I have declared my intention to become a citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 15th day of Aug., 1901, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona

fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ODIN A. OLSEN.

216 I, L. B. Andrews, of U. S. Land Office do hereby certify that the above affidavit was subscribed and sworn to before me this 6th day of May, 1903, at my office at Seattle in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Endorsed: Homestead Proof. Land Office at Seattle, Washington. Original Application No. 18040. Final Certificate No. 19465. Approved: J. Henry Smith, Register; Lyman B. Andrews, Receiver.

No. 19465.

RECEIVER'S OFFICE AT SEATTLE, WASHINGTON,
May 6, 1903.

Received from Odin A. Olsen of Palmer, of King County, Washington, the sum of Four hundred dollars; being in full for the NW¼ of Section No. 34, in Township No. 22 N., of Range No. 7 E., containing 160 acres, at $2.50 per acre, $400.00.
Commuted Hd. No. 18040.

LYMAN B. ANDREWS, *Receiver.*

$1.50 testimony fee received. Number of written words, 665. Rate per 100 words 22½ cents.

Endorsed: U. S. General Land Office. Received Aug. 21, 1903. 142770. 262614. Filed for record at request of Grantee May 7, 1903, at 58 min. past 10 A. M. and recorded in Vol. 5 of Patents, page 417, Records of King County, Wash. Geo. B. Lamping, County Auditor. By Ellen S. Fish, Deputy.

No. 19465.

RECEIVER'S OFFICE AT SEATTLE, WASHINGTON,
May 6, 1903.

Received from Odin A. Olsen of Palmer, of King County, Washington, the sum of Four hundred dollars; being in full for the NW¼ of Section No. 34, in Township No. 22 N., of Range No. 7 E., containing 160 acres, at $2.50 per acre, $400.00.
Commuted Hd. No. 18040.

LYMAN B. ANDREWS, *Receiver.*

217 $400.00 Commuted Hd. No. 18040.
$1.50 testimony fee received. Number of written words, 665. Rate per 100 words 22½ cents.

No. 19465.

LAND OFFICE AT SEATTLE, WASHINGTON, *May* 6, 1903.

It is hereby certified that, in pursuance of law, Odin A. Olsen, residing at Palmer, in King County, State of Washington, on this day purchased of the Register of this Office the NW¼ of Section No. 34 in Township No. 22 N. of Range No. 7 E. of the W. Principal Meridian, Wash. containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars, for which the said Odin A. Olsen has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Odin A. Olsen shall be entitled to receive a Patent for the lot above described.

Comm. Hd. No. 18040. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

J. HENRY SMITH, *Register.*

Copp & Luckett,
Attorneys at Law, Washington, D. C.
Pacific Building, 624 F. Street N. W.

Doc. No. —.
Div. G.
Cash Ent. No. 19465.
Seattle Dist., Wash.
C. & L. No. 1794.

AUG. 20, 1903.

Hon. Commissioner of the General Land Office:

SIR: We hereby enter our appearance in the case of Odin A. Olsen involving NW¼, Sec. 34, T. 22 N., R. 7 E., as above, for claimant.

Please notify us of all action.

Very respectfully,

COPP & LUCKETT.

218 Endorsed: U. S. General Land Office. Received Aug. 21, 1903. 142772. Copp & Luckett, Washington, D. C., Aug. 20, 1903. Enter appearance for Odin A. Olsen in matter of C. E. No. 19465 Seattle Land District, Wash., Division C.

Indorsed: Complainant's Exhibit C, Cause No. 1706, U. S. Circuit Court, Western Dist. of Washington, Northern Division. Filed Oct. 14, 1909. Roger S. Greene, Master, etc.

Filed: U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

COMPLAINANT'S EXHIBIT "D."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 2, 1908.

I hereby certify that the annexed copies pages 1 to 31 inclusive, of papers in H. E. No. 17839 C. C. E. No. 18977 Zachariah Turner Seattle, Wash., land district and papers relating thereto, are true and literal exemplifications from the originals in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOHN O'CONNELL,
Acting Recorder of the General Land Office.

Application No. 17839.

Homestead.

LAND OFFICE AT SEATTLE, WASH., *Sept.* 10, 1900.

I, Zachariah Turner, of Palmer, Wash., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the East half of the East half (E½—E½) of Section 34, in Township 22 N. of Range 7 E., containing 160 acres.

ZACHARIAH TURNER.

219 LAND OFFICE AT SEATTLE, WASH., *Sept. 10th*, 1900.

I, Edward P. Tremper, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

EDWARD P. TREMPER, *Register.*

Endorsed: No. 17839. Homestead Application. Zachariah Turner, Seattle, Wash., Sept. 10, 1900. Section 34, Town. 22 N., Range 7 E.

Receiver's Receipt, No. 17839. *Application, No.* 17839.

Homestead.

RECEIVER'S OFFICE, SEATTLE, WASHINGTON,
September 11th, 1900.

Received of Zachariah Turner of Palmer, Wash., the sum of Twenty Two dollars; being the amount of fee and compensation of Register and Receiver for the entry of E½ of E½ of Section

34 in Township 22 N. of Range 7 East, W. M., under Section No. 2290, Revised Statutes of the United States.

160 acres at $2.50 per acre.

$22.00.

COLUMBUS T. TYLER, *Receiver.*

Non-Mineral Affidavit.

UNITED STATES LAND OFFICE,
SEATTLE, WASH., *Sept.* 10, 1900.

Zachariah Turner, being duly sworn according to law, deposes and says that he is the identical Zachariah Turner who is an applicant for Government title to the E½ E½, Sec. 34, Town. 22 N., R. 7 East; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Palmer, King Co., Wash.

ZACHARIAH TURNER.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant (or has been satisfactorily identified before me by John Arthur), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Wash., within the Seattle land district, on this 10th day of September, 1900.

COLUMBUS T. TYLER.

Homestead Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASH., *Sept.* 10, 1900.

I, Zachariah Turner, of Palmer, Wash., having filed my application No. 17839, for an entry under section 2289, Revised Statutes of

the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am a natural-born citizen of the United States, over the age of 21 years, and the head of a family; that my said application is honestly and in good faith made for the pur-
221 pose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

ZACHARIAH TURNER.

Sworn to and subscribed before me this 10th day of September, 1900, at my office at Seattle in King County, Washington.

COLUMBUS T. TYLER, *Receiver.*

Notice for Publication.

DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT SEATTLE, WASH., *Nov.* 12, 1901.

Notice is hereby given that the following-named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver at Seattle, Wash., on January 9, 1902, viz: Zachariah Turner, Hd. Entry No. 17839, for the E½ of E½, Sec. 34, Town. 22 N., R. 7 East, W. M.

222 He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

M. Creedican, J. M. McWilliams, Sam Richey, A. Fitch, all of Palmer, Wash.

EDWARD P. TREMPER, *Register.*

No. 1.—Homestead.

LAND OFFICE AT SEATTLE, WASH., *November* 12, 1901.

I, Zachariah Turner, of Palmer, Wash., who made Homestead Application No. 17839 for the E½ of E½, Sec. 34, Town. 22 N., R. 7 East, W. M., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before the Register and Receiver at Seattle, Wash., on Jany. 9, 1902, by two of the following witnesses:

M. Creedican, J. M. McWilliams, Sam Richey, A. Fitch, all of Palmer, Wash.

ZACHARIAH TURNER.

LAND OFFICE AT SEATTLE, WASH., *Nov.* 12, 1901.

Notice of the above application will be published in the Argus printed at Auburn, Wash., which I hereby designate as the newspaper published nearest the land described in said application.

EDWARD P. TREMPER, *Register.*

Receiver's Receipt No. 17839; *Application No.* 17839.

Homestead.

RECEIVER'S OFFICE, SEATTLE, WASHINGTON,
September 10*th*, 1900.

Received of Zachariah Turner of Palmer, Wash., the sum of Twenty Two dollars; being the amount of fee and compensation of Register and Receiver for the entry of E½ of E½ of Section 34 in Township 22 N. of Range 7 East, W. M., under Section No. 2290, Revised Statutes of the United States.

160 acres at $2.50 per acre.

$22.00.

COLUMBUS T. TYLER, *Receiver.*

223 *Notice for Publication.*

DEPARTMENT OF THE INTERIOR.
LAND OFFICE AT SEATTLE, WASH., *November* 12, 1901.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver at Seattle, Wash., on January 9, 1902, viz: Zachariah Turner. Hd. entry No. 17839 for the E. ½ of E. ½ Sec. 34, Town. 22 N., R. 7 East, W. M.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

M. Creedican, J. M. McWilliams, Sam Richey, A. Fitch, all of Palmer, Wash.

EDWARD P. TREMPER, *Register.*

Nov. 14-Jan. 8.

Affidavit of Publication.

STATE OF WASHINGTON,
County of King, ss:

J. S. Rankin, being first duly sworn, upon his oath, deposes and says: that he is the publisher of "The Auburn Argus," which is a weekly newspaper which, before and at the time hereinafter stated and included, was printed and published in the Town of Auburn, in the County of King and State of Washington, once a week as a weekly newspaper; and was during all of said time of general circulation in said County of King; and that the notice for publication of which a printed copy is hereto attached, was published in full in said newspaper, and in every issue thereof, for seven consecutive weeks; which said printed copy was always a precise counterpart and fac simile of the notice for publication so published; and that the date of the first publication as aforesaid of said notice for publication was the 14th day of November, 1901, and the date of the last publication thereof was the 8th day of January, 1902.

J. S. RANKIN.

224 Subscribed and sworn to before this 8th day of January, 1902.

[SEAL.] JAMES E. McGREW,
Notary Public in and for the State of Washington, Residing at Seattle, W'n.

Certificate as to Posting of Notice.

LAND OFFICE AT SEATTLE, WASHINGTON, *Jan'y* 9, 1902.

I, Edward P. Tremper, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 12th day of Nov., 1901.

EDWARD P. TREMPER, *Register.*

Non-Mineral Affidavit.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASHINGTON, *Jan'y* 9, 1902.

Zachariah Turner, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the E. ½ E. ½ Sec. 34, Tp. 22 N., R. 7 E.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any

vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked
225 for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Palmer, Wash.

ZACHARIAH TURNER.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Seattle, Washington, within the Seattle land district, on this 9th day of January, 1902.

EDWARD P. TREMPER, *Register.*

Affidavit Required of Claimant.

I, Zachariah Turner, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 17839, made upon the E. ½ E. ½ section 34, township 22 N. range 7 E., do solemnly swear that I made settlement upon said land on the 15th day of September, 1900, and that since such date, to wit: on the 15th day of September, 1900, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated 5 acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ZACHARIAH TURNER.

Subscribed and sworn to before me this 9th day of January, 1902, at my office at Seattle, Washington in King County, Wash.

EDWARD P. TREMPER, *Register.*

226 *Affidavit Required of Claimant.*

I, Zachariah Turner, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States, my homestead entry No. 17839, made upon the E. ½ E. ½ section 34, town-

ship 22 N. range 7 E., do solemnly swear that I made settlement upon said land on the 15th day of September, 1900, and that since such date, to wit: on the 15th day of September, 1900, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated 5 acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ZACHARIAH TURNER.

Subscribed and sworn to before me this 2nd day of December, 1902, at my office at Seattle, Washington in King County, Wash.

LYMAN B. ANDREWS, *Receiver.*

Homestead Proof—Testimony of Witness.

M. CREEDICAN, being called as witness in support of the Homestead entry of Zachariah Turner for final proof, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. M. Creedican, 49 years, Palmer, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

227 Ans. Agricultural land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. He settled upon the homestead and established actual residence thereon in September, 1900.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He has not been absent to my knowledge.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 5 acres slashed, 3 acres cultivated. Raised crops 1 year.

Ques. 9. What improvements are on the land, and what is their value?

Ans. House, Barn, Chicken coup, Woodshed, Outbuilding, well, fencing. Total value about $900.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Have never seen any.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

M. CREEDICAN.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me
228 this 9th day of January, 1902, at my office at Seattle, Washington in King County.

EDWARD P. TREMPER, *Register.*

Homestead Proof—Testimony of Witness.

A. FITCH, being called as witness in support of the Homestead entry of Zachariah Turner for final proof, testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. A. Fitch, 41 years; Palmer, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. Farming land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. About October 1900.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Never been absent.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 5 acres slashed, 2 acres cultivated. Raised crops 1 year.

229 Ques. 9. What improvements are on the land, and what is their value?

Ans. House, Barn, Chicken Coup. Outhouse, Feed house, fencing, etc. Total value about $900.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None that I know of.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

A. FITCH.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 9th day of January, 1902, at my office at Seattle, Washington in King County.

EDWARD P. TREMPER, *Register.*

Homestead Proof—Testimony of Claimant.

ZACHARIAH TURNER, being called as a witness in his own behalf in support of homestead entry, No. 17839, for final proof testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Zachariah Turner, 36 years; Palmer, Wash.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. Am native born citizen. Born in State of Illinois.

Ques. 3. Are you the identical person who made homestead entry, No. 17839, at the Seattle, Washington land office on the 11th day of September, 1900, and what is the true description of the land now claimed by you?

Ans. Yes. E½ E½, Sec. 34, Tp. 22 N., R. 7 E.

230 Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. House was completed & actual residence established therein Oct. 5, 1900. House 20 x 30 ft. Barn 18 x 30 ft. Chicken coup

10x10 ft. 1100 yards picket & brush fence. Orchard 12 trees & small fruits. Total value $900 to $1000.00.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife & 5 children & my mother. Have resided on the land continuously since first establishing residence thereon.

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Never been absent.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. 4 acres cultivated, 1 acre slashed & burnt. Raised crops 1 year.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Agricultural land & most valuable for agricultural purposes.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not any.

231 Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. Never made any.

ZACHARIAH TURNER.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed and sworn to before me this 9th day of January, 1902, at my office at Seattle, Washington in King County.

EDWARD P. TREMPER, *Register.*

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Zachariah Turner, having made homestead entry of the E½ E½ Section No. 34 in Township No. 22 N. of Range No. 7 E., subject to entry at Seattle, Washington under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am native born a citizen of the United States; that I have made actual settlement upon and cultivated and resided upon said land since the 15 day of September, 1900, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance 232 to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

ZACHARIAH TURNER.

I, Edward P. Tremper, of ——, do hereby certify that the above affidavit was subscribed and sworn to before me this 9th day of January, 1902, at my office at Seattle, Washington, in King County.

EDWARD P. TREMPER, *Register.*

Endorsed: Commuted. Homestead Proof. Land Office at Seattle, Washington. Original Application No. 17839. Final Certificate No. 18977. Approved: J. Henry Smith, Register; Lyman B. Andrews, Receiver. Test'y Fees 1.60 Paid for 710 words at 22½ cts. per 100.

$400.00 purchase price of land tendered & refused this 9th January 1902.

No. 18977.

RECEIVER'S OFFICE AT SEATTLE, WASHINGTON,
December 2nd, 1902.

Received from Zachariah Turner of Palmer, County of King, Wash., the sum of Four hundred dollars; being in full for the E½ of E½ of Section No. 34, in Township No. 22 N., of Range No. 7 East, W. M., containing 160 acres, at $2.50 per acre. Commuted homestead. $400.00.

LYMAN B. ANDREWS, *Receiver.*

$1.60 testimony fee received. Number of written words, 710. Rate per 100 words 22½ cents. Paid on January 9, 1902.

Endorsed: 248125. Filed for record at request of Z. Turner, Dec. 2, 1902, at 45 min. past 11 A. M. and recorded in Vol. 5 of Patents, page 331, Records of King County, Wash. Geo. B. Lamping, County Auditor. By Ellen S. Fish, Deputy.

No. 18977.

LAND OFFICE IN SEATTLE, WASHINGTON,
December 2nd, 1902.

It is hereby certified that, in pursuance of law, Zachariah Turner, residing at Palmer, in King County, State of Washington,
233 on this day purchased of the Register of this Office the E½ of E½ of Section No. 34 in Township No. 22 N. of Range 7 East of the Will. Principal Meridian, Washington, containing 160 acres, at the rate of Two dollars and 50 cents per acre, amounting to Four hundred dollars, for which the said Zachariah Turner has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Zachariah Turner shall be entitled to receive a Patent for the lot above described.

Patent to contain reservation according to proviso to the act of August 30, 1890 (26 Stat. 391).

J. HENRY SMITH, *Register.*

Endorsed Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. No. 18977. Cash Entry. Land Office at Div. C, List No. 88. Sec. 34, Town. 22 N., Range 7 E. Patsent Nov. 27/03, Copp & Luckett, Washington, D. C. Approved Oct. 17, 1903, by A. C. B., Clerk. Division C. Patented Nov. 2, 1903. Recorded Vol. 87, Page 432. 12-168. Before the General Land Office. In the matter of C. E. No. 18977 of Zachariah Turner, Seattle, Wash.

Supplemental Affidavit of Witnesses.

STATE OF WASHINGTON,
County of Pierce, ss:

M. Creedican being duly sworn on his oath does say that he is the identical party who testified as witness in the final proof made in the above described cash entry on Jan. 9th, 1902. Affiant says that in giving his testimony and in speaking of the land on which the claimant Turner has lived and complied with the homestead law, he has reference solely to the E½ E½, Sec. 34, T. 22 N., R. 7 E., and he asks now that his testimony then given be applied to the above described land.

M. CREEDICAN.

234 Subscribed and sworn to before me this 8 day of September, 1903.

[SEAL.]
Notary Public. ELI P. NORTON,
Notary Public in and for the State of Washington, residing at Tacoma.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
SEATTLE, WASH., *August 31st*, 1903.

Zachariah Turner, Esq., Palmer, Washington.

SIR: In reference to H. E. No. 18977, E½ E½ Sec. 34, Twp. 22 N., R. 7 E., you are advised that under date of August 20th, 1903, the Honorable Commissioner of the General Land Office directs that you furnish an affidavit from each of the two witnesses who appeared in your behalf at the time you submitted proof upon your homestead entry that the testimony had special reference to the foregoing described tract of land, as it appears that the description of the land was not set forth in the testimony.

Seventy days from notice are allowed within which to comply with the requirements of the Commissioner, or to appeal from his decision to the Honorable Secretary of the Interior, and upon your failure to take action within the time specified the case will be reported for appropriate action. A copy of the decision is enclosed.

Very respectfully,

J. HENRY SMITH, *Register*.

Before the General Land Office.

In the Matter of C. E. No. 18977 of Zachariah Turner, Seattle, Wash.

Supplemental Affidavit of Witnesses.

STATE OF WASHINGTON,
County of ——, *ss:*

A. Fitch being duly sworn on his several oaths, do say that he is the identical party who testified as witness in the final proof
235 made in the above described cash entry on Jan. 9, 1902.

Affiant says that in giving his testimony and in speaking of the land on which the claimant Turner has lived and complied with the Homestead Law, he had reference solely to the E½ E½ Sec. 34, T. 22 N., R. 7 E., and he asks now that his testimony then given be applied to the above described land.

A. FITCH.

Subscribed and sworn to before me this 12 day of Sept. 1903.

W. F. ECKHART,
Notary Public.

[SEAL.]

Endorsed: In re C. E. No. 18977. Seattle, Wash. Zach Turner. Supplemental affidavits of Final Proof witnesses. U. S. General Land Office. Received Sep. 21, 1903. 159536.

PALMER, WASH., *Sept.* 16-'03.

Mr. Smith, Seattle Land Office.

Yours of August 31-'03, is at hand regarding affidavits of each of my witnesses regarding the H. E. No. 18977, will say I have succeeded in getting their signatures and have forwarded same to Washington, D. C.

Hoping to be satisfactory

I remain yours truly

ZACHARIAH TURNER.

Homestead entry No. 17839, made Sept. 10/00.

Residence established Oct. 5/00.

Commutation proof made Jan. 9/02.

C. E. No. 18977, made Dec. 2/02, being withheld on account of mineral (coal) protest which was dismissed by "X" Oct. 6./02.

ANDERSON.

Make special W. A. R. Aug. 19. 03. Comr.

236 Copp & Luckett,

Attorneys at Law, Washington, D. C.

Pacific Building, 624 F Street N. W.

In your reply refer to numbers and Letters given below.

Div. "C." No. 1603. AUG. 15, 1903.

Hon. W. A. Richards, Commissioner of the General Land Office, Washington, D. C.

SIR: In the matter of C. E. No. 18977, Seattle, Washington, of Zach Turner, (commuted homestead) we call your attention to our letter of Jan. 20th last asking to have this entry made special for patenting. At that time you could not take such action for the reason that you discovered a number of uncanceled but expired coal declaratory statements on the land. By your letter "X" of the 13th inst. to the Seattle Office, you canceled all these coal filings, and relieved the final entry from suspension. As Mr. Turner's proof and payment were made on Jan. 9, 1903, we now renew the request made on Jan. 20th last and ask that the entry be made special so far as necessary not only for examination and approval but for the issuance of patent.

Very truly yours,

COPP & LUCKETT.

See me about this.

W. A. R., *Com'r.*

Endorsed: U. S. General Land Office. Received Aug. 17, 1903. 140258. Copp & Luckett, City. Aug. 15, 1903. Ask that C. E. No. 18977, Seattle, Wash., of Zach Turner be given its place for patenting as of the date of final proof.

237

Copp & Luckett.

Attorneys at Law, Washington, D. C.

Pacific Building, 624 F Street N. W.

In your reply refer to numbers and Letters given below.

Div. "C." No. 1603. SEPT. 19, 1903.

Hon. W. A. Richards, Commissioner of the General Land Office, Washington, D. C.

SIR: In the matter of C. E. No. 18,977, Seattle, Washington, of Zachariah Turner, we file herewith the supplemental affidavits of his witnesses, properly identifying the land about which they testified in making final proof for him. A joint affidavit was prepared in the expectation that both witnesses would sign the same document, but as one of them had moved away it became necessary to prepare separate papers, thus accounting for the erasures in the affidavits. This action complies with your requirement of Aug. 20th last, and we ask that said entry be now patented.

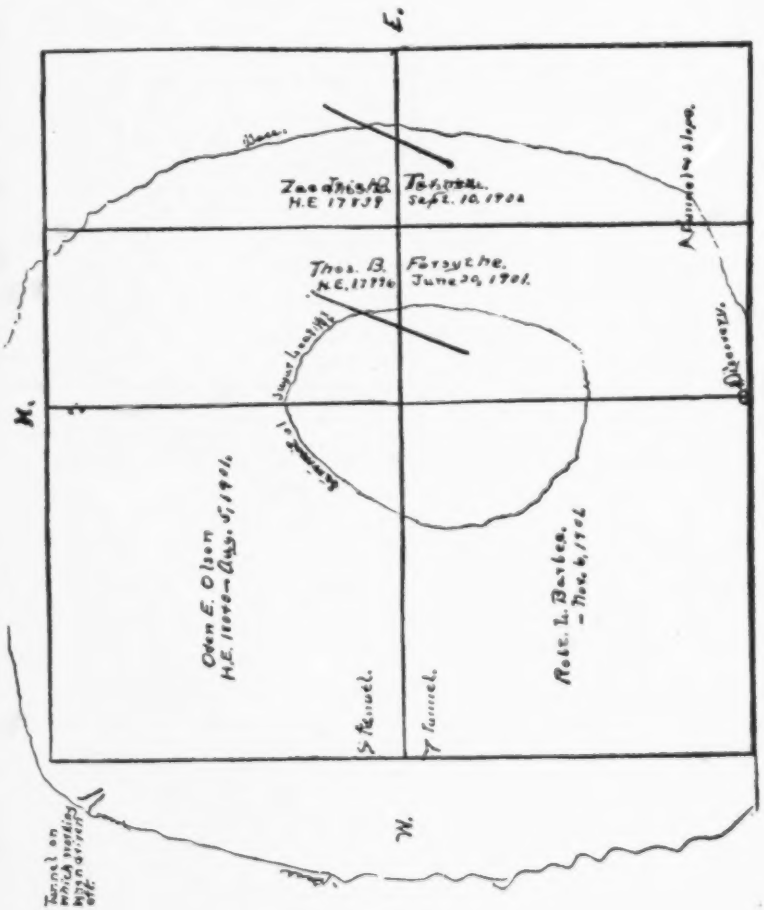
Very respectfully,

COPP & LUCKETT.

Endorsed: U. S General Land Office. Received Sep. 21, 1903. 159536. Copp & Luckett, City. Sep. 19, 1903. File supplemental affidavit by F. P. Witnesses in C. E. No. 18977, Seattle, Wash.

Endorsed: Complainant's Exhibit D. Cause No. 1706. U. S. Circ. Court, Western Dist. of Washington, Northern Division. Filed Oct. 14, 1909. Roger S. Greene, Master, &c. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

238 COMPLAINANT'S EXHIBIT "E."



239 COMPLAINANT'S EXHIBIT "F."

The Pacific Coast Company.

J. C. Ford, Vice-Pres't and Gen'l Mgr.

SEATTLE, *October* 19, 1909.

Hon. Roger S. Greene, U. S. Master in Chancery, Room 303 Federal Building, Seattle.

DEAR SIR: I herewith enclose copies of exhibits which I produced and testified in regard to, before you in the case of United States of America vs. Washington Securities Company, on Friday, the 15th instant.

I have had these copies compared with the originals and am assured they are correct copies.

Yours truly,

J. C. FORD,
Vice-Pres't & Gen'l Mgr.

Enc.

Endorsed: This enclosed to me copies of letters, which copies are marked Exhibits F, G, H, I, & J, & was received by me and filed this 20th day of Oct., 1909, in Cause No. 1706, U. S. Circ. Ct., West'n Dist. of Wash., No. Div. Roger S. Greene, Master &c.

Personal,

Copy.

Oregon Improvement Company.

SAN FRANCISCO, *Nov.* 8, 1890.

C. J. Smith Esq., Seattle.

DEAR SIR: At the conclusion of a fight conducted for us by Mr. Jas. McNaught and growing out of an error of our Mining Supt. I was enabled to get from Smithers and Whitworth a declaration that I had a 1/3 interest in Section 34 of the Township north of the one in which Franklin mine was situated.

They would not give it to the O. I. Co., but only to me and I made a private declaration of Trust to the O. I. Co. at the time.

240 It was then regarded as a valuable section and for a long time afterward we were figuring upon an extension of our lines in its direction. It is unsurveyed land and reqires to be held. Various reports have been made to me about its valuee. Some favorable, some otherwise. We have been contributing 1/3 of the expense of holding it. When Mr. McNeill first came to Seattle, I asked him to have it examined and pass final judgment on it. If it be good, we want to keep it, otherwise we want to let it go. I have several times written him to advise me regarding it but he has never replied. During my last visit to Seattle he promised to send Mr. Corey to

make a report on it but I have as yet heard nothing. Will you please take the matter up and advise me whether the Company should longer contribute towards the cost of maintaining possession.

Yours truly,

JOHN L. HOWARD.

Certified a true copy of papers in files of The P. C. Co.

J. C. F.

Endorsed: 1706. F. U. S. Circuit Court, Western District of Washington, Northern Division, U. S. v. Washington Securities Co., Plff's Exhibit F. Filed. Roger S. Greene, Master.

Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

COMPLAINANT'S EXHIBIT "G."

Copy.

Oregon Improvement Company.

Joseph Simon, Receiver.

SAN FRANCISCO, *December 8th*, 1890.

C. J. Smith, Esq., General Manager, Seattle, Washington.

DEAR SIR: I enclose a letter from F. H. Whitworth who is acting as agent for the parties who have taken up Section 34, which is in the Township North of the one containing our Franklin
241 Mine. A one-third interest in this section was obtained by me, ostensibly for myself, but really for the Company, several years ago, and at the time I made a declaration of trust to the Oregon Improvement Co., which it has since held. Ostensibly I have been paying the money to Whitworth out of my own pocket, but really it has been the Company's check.

I brought this matter to the attention of Mr. McNeill when he first came with the concern and asked him if he would not please examine it himself, or have it examined, to see whether it was worth while for us to continue paying our proportion of the expense of holding this unsurveyed land until it could be bought. I have repeatedly brought this to his attention, but have never yet been able to get an opinion. Last year I undertook to arrange for the settlement of this matter through the Seattle office. Mr. Whitworth replied that the original agreement was that I should be the owner of the one-third interest in that land, and it was never intended that the O. I. Co. should own it, and they did not propose to allow me to set it over.

Here is an expense of the Company's which was incurred prior to the appointment of the Receiver. I feel that I have no right to pay it. If he draws upon me and I fail to protect the draft, the Company will probably lose its interest in this land, for which it has

been paying one-third of the expense. Will you please pass upon this matter as soon as you receive this letter, and advise me whether I shall pay or not.

Yours truly,

JOHN L. HOWARD, *Manager.*

Certified a true copy of papers in the files of The Pacific Coast Co.

J. C. F.

Endorsed: G. 1706. U. S. Circuit Court, Western District of Washington, Northern Division. U. S. v. Washington Securities Co. Pl'tff's Exhibit G. Filed, Roger S. Greene, Master &c. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

242 COMPLAINANT'S EXHIBIT "H."

Copy.

(Form 224.)

Oregon Improvement Company.

Seattle Department.

The Columbia & Puget Sound R. R. Co..
The Franklin Coal Mines and store.
The Newcastle Coal Mines and store.
The O. I. Co.'s Saw Mills at Seattle.
The Local Coal business at Seattle.

SEATTLE, WASHINGTON, *Dec.* 9, 1890.

H. W. McNeill Esq., Seattle, Wash.

DEAR SIR: Please let me know what you think of Section 34 marked on the map in the name of J. L. Howard. Is there anything in it, or have you ever made any examination of it?

Yours truly,

C. J. SMITH.
General Manager.

Correct copy.
J. C. FORD.

Endorsed: H. 1706. U. S. Circuit Court, Western District of Washington, Northern Division. U. S. v. Washington Securities Co. Pl'tff's Exhibit H. Filed, Roger S. Greene, Master &c. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

COMPLAINANT'S EXHIBIT "I."

Copy.

SEATTLE, WASHINGTON, *January* 13, 1897.

John L. Howard, Esq.

DEAR SIR: I have not sent you the acc't of Sect. 34 for two years. It was small for each year therefore did not attend to it promptly.

I send the two years' ac't in this:

Don't you want to buy out some or all of our interests. McGuire and I would be glad to dispose of our shares (we each own
243 2/15) at a low price, and I think Colman & Smithers would also, or do you know of anyone else who wants to buy a good section of coal cheap?

As you will see your share of expenses for the two years is $51.85.

Yours truly,

F. W. WHITWORTH.

Certified a true copy of papers in the files of The Pacific Coast Company.

J. C. FORD.

Copy.

Section 34.

To expenses 1895:			
James McGuire & as'ts		42.50	
Refiling R. L. Thorne	25.00		
Filing fees	3.00	28.00	
			$70.50
To expenses 1896:			
James McGuire & as'ts		56.00	
Refiling R. L. Thorne	25.00		
Filing fees	3.00	28.00	
			$84.00
			$154.50
Total ex. two years	154.50		
1/3 " " "	51.50		
Due from J. L. Howard		$51.50	

Seattle, January 13th, 1897.

F. H. WHITWORTH, *Ag't.*

Certified a true copy of papers in files of The Pacific Coast Company.

J. C. FORD.

Endorsed: I. 1706. U. S. Circuit Court Western District of Washington, Northern Division. U. S. vs. Washington Securities Co. Pl'tff's Exhibit I. Filed, Roger S. Greene, Master &c. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

244 COMPLAINANT'S EXHIBIT "J."

No. 174.

Oregon Improvement Company.

C. J. Smith, Receiver.

To John L. Howard, Manager, Dr.; Address, San Francisco, Cal. 1/22, 1897.—For Amount Advanced to Cover Expenses in Refiling & ect. on Section 34 in 1895 and 1896, as per Letter of F. H. Whitworth to Jno. L. Howard, Dated 1/13/97. Attached.

Jas. McGuire et al., 1895	42.50
Refiling R. L. Thomas, 1895	25.00
Filing Fee, 1895	3.00
Jas. McGuire et al., 1896	56.00
Refiling, 25.00; Filing Fee, 3.00, 1896	28.00
This Company's Prop'n. 1/3	154.50
	51.50

Approved:
(Sg.)
C. J. SMITH,
Receiver and General Manager.

Receipt (old form).
(Sg.)
JOHN L. HOWARD.

Correct:
(Sg.)
McA.

Audit No. 174. Month of December, 1896. Chargeable to Constr'n and Property Coal Lands Sec. 34. Approved (Sg.) Jno. T. Campion. Stamped: Paid Oregon Improvement Co., C. J. Smith, Receiver, Jan. 30, 1897. Seattle, Wash.

Endorsed: J. No. 1706. U. S. Circuit Court, Western District of Washington, Northern Division. Compl't's Exhibit J. Filed, Roger S. Greene. U. S. Circuit Court, Western Dist. of Washington, Northern Division. U. S. vs. Washington Securities Co. Pl'tff's Exhibit J. Roger S. Greene, Master &c. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy. Certified a true copy of paper in files of The P. C. Co. (as far as this new form of stationery will permit).

(Here follow photographs marked pages 245 to 260.)

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DEFENDANT'S EXHIBIT No. 1.—R. L. Barbee's Clearing on S. W. ¼ of Section 34, Township 22, N. R. 7, E. W. M.

DEFENDANT'S EXHIBIT No. 2—T. B. Forsyth's Clearing on W. ½ of E. ½ Section 34, Township 22, N. R. 7, E. W. M.

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DEFENDANT'S EXHIBIT No. 3.—E. Turner's Clearing on E. ½ of E. ½ Section 34, Township 22, N. R. 7, E. W. M

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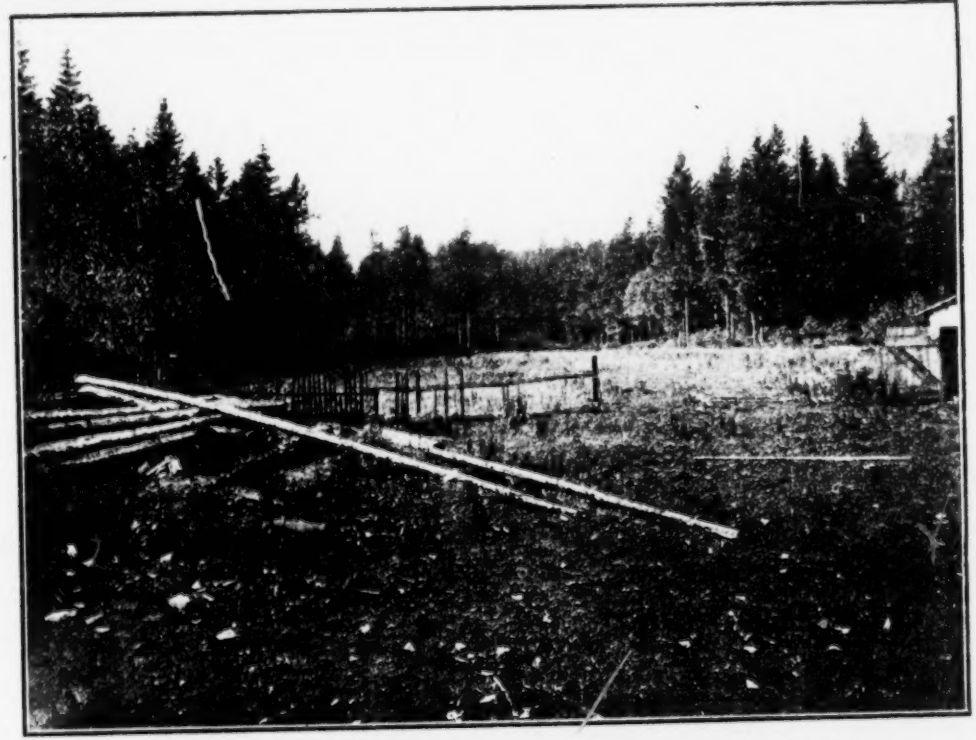
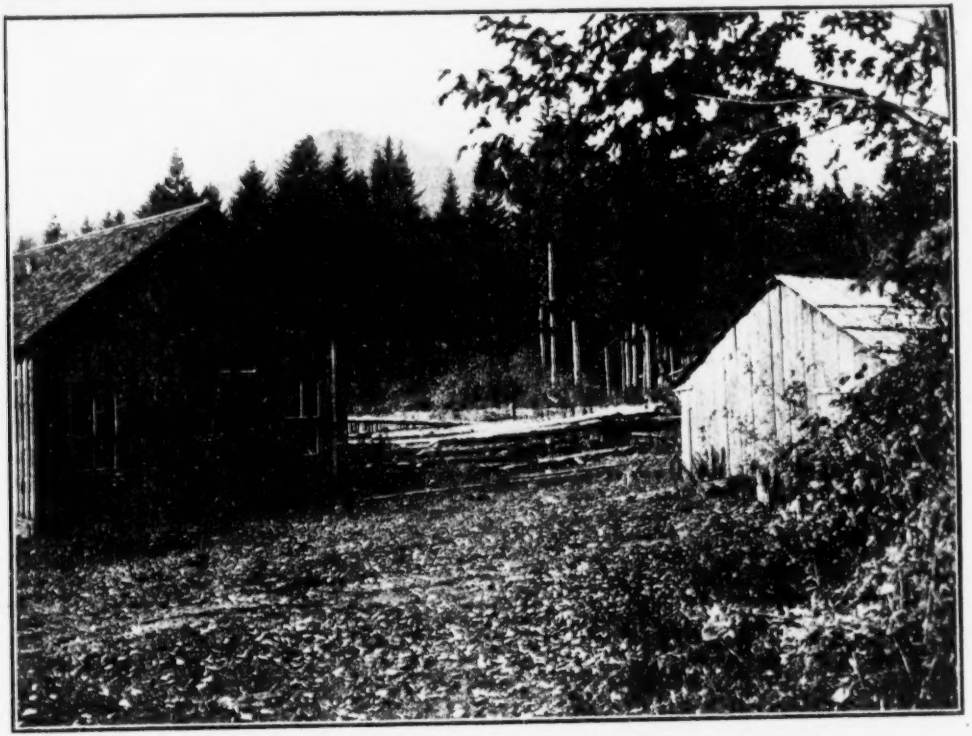


DEFENDANT'S EXHIBIT 4.—Z. Turner's Clearing on E. ½ of E. ½ Section 34, Township 22, N. R. 7, E. W. M.



DEFENDANT'S EXHIBIT 5.—Sugar Loaf Mountain from Turner's Clearing on E. ½ of E. ½ Section 34, Township 22, N. R. 7, E. W. M.

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DEFENDANT'S EXHIBIT No. 6.—O. Olson's Clearing on N. W. ¼ of Section 34, Township 22, N. R. 7, E. W. M.

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DEFENDANT'S EXHIBIT No. 7.—O. Olson's Clearing on N. W. ¼ of Section 34, Township 22, N. R. 7, E. W. M.

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DEFENDANT'S EXHIBIT No. 8.—Sugar Loaf Mountain from O. Olson's Clearing on N. W. ¼ of Section 34, Township 22, N. R. 7. E. W. M.

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261 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Memorandum Decision on the Merits.

Filed Jan. 12, 1911.

This suit is prosecuted by the Government to cancel patents alleged to have been illegally issued for lands containing valuable deposits of coal and to recover the land. The patents were issued under the homestead law to individuals who entered as trespassers, after several thousand dollars had been expended in the development of a coal mine. The land is situated in a coal district, the pleadings admit that it contains workable veins of coal and the evidence proves that the defendant corporation bought it as coal land, relying upon the report of a mining expert as to its mineral value and upon an abstract of the record as to the nature and condition of the title. The coal was discovered in the year 1882 and the discoverer with three other well known citizens then formed a syndicate and expended over $8,000.00 in exploiting the mine; and to maintain their possession against claim jumpers, they were compelled to engage in litigation which terminated in a compromise arrangement by which John L. Howard, an agent of the Oregon Improvement Company, was admitted to membership in the syndicate and that Company became a contributor to its treasury. Afterwards the several patentees entered into possession and excluded the coal syndicate by force and threats of violence. The land office records contain evidence that the homestead claims were disputed, an application to purchase one quarter section as coal land, was made, and the price $3,200.00 was tendered, but the officers of the District Land Office rejected the coal claim and refused to receive the money
262 tendered, and thereafter the homestead claimants were permitted to commute their entries, and patents were issued to them under the provisions of law authorizing homestead claimants to purchase for cash, in lieu of compliance with the requirements as to residence and cultivation. The evidence contains no explanation of the conduct of the land office officials in allowing the homestead entries in preference to the coal claims, and accepting $400.00 for a quarter section rather than $3,200.00.

No complete transcript of the land office records affecting the land has been offered in evidence and it must be inferred from lack of evidence to the contrary, that there was no formal contest between the syndicate and the patentees, that without permitting the introduction of evidence the coal claim was arbitrarily rejected and

no appeal was taken. The patentees at the time of initiating their claims knew of the discovery of coal and the extent of development work by the syndicate. When their final proofs were submitted, the Register and Receiver of the local Land Office were apprised of adverse claims and by inquiry could readily have obtained as much information concerning the mineral character of the land as the government has submitted for the guidance of this Court in the decision of this case. When the respondent purchased the land, its officers knew that the land contained valuable deposits of coal, and that the government's title had been conveyed to homestead settlers who had made but a sorry pretense of farming.

If this Court were free to render a decision on general principles, I would take the ground that the United States government as proprietor of the public domain has by laws enacted by Congress, classified the lands, ownership of which may be acquired by individuals, and fixed the minimum prices to be paid therefor, varying according to the supposed differences in value between lands of the different classes. That according to the schedule of prices the land in controversy, if classified as coal land, should have been sold for $20.00 per acre instead of $2.50 per acre, the price of non-mineral land. That the government by its laws has constituted an agency for managing the public domain, known as the Land Depart-
263 ment being a bureau of the Department of the Interior, and conferred upon that agency, power as a special tribunal to determine all questions of fact to be acted upon in the administration of its business as a land agency, including the facts with respect to each particular tract of land, as to its proper classification and the price for which, and the conditions upon which ownership thereof may be conveyed to individuals, its findings being conclusive unless impeached for fraud. That the issuance of patents conveying titles to the respective commuters of homestead entries, was the consummation of violations of law for which the commuters and the officers of the Land Department were mutually culpable. That the defendant at the time of purchasing the land had actual knowledge that when the commutation entries were allowed, the land was known to be coal land and should have been sold as coal land only, to purchasers authorized by law to make entry of coal land in limited quantities as prescribed by law; and knew that the officers of the land office had, contrary to their duty, allowed the entries and issued patents as if the land were rightfully classed as non-mineral land, and with that knowledge purchased the land from the patentees, paying therefor what appeared to be a fair price for undeveloped coal land. That having so purchased the land with knowledge of the facts tainting the title, the defendant, as the successor in interest, should suffer the consequences of the legal wrong of its vendors, and being so placed in their shoes, it should also be subrogated to their rights. And that in view of the mutual faults to be imputed to the litigants respectively, the complainant should be held to the rule that, he who in a court of equity, seeks equitable relief, should do equity on his part, which in this case would require payment to the defendant of the purchase money received from the

commuters, as a condition precedent to the cancelling of the patents, and as that seems to be impracticable, the case should be dismissed.

The Court is not free, however, to apply in this case that wholesome principle of equity jurisprudence embodied in the maxim that he who seeks equity should do equity, because in a case similar to this, the Supreme Court of the United States has established a rule that, the government of the United States cannot be subjected to that rule, when it is a complainant seeking restoration to the public domain of land which individuals have attempted to acquire by illegal, or fraudulent, practices.

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United States v. Trinidad Coal Co., 137 U. S. 160.

Upon the authority of that decision, the Court directs that a decree be entered in accordance with the prayer of the bill of complaint.

C. H. HANFORD, *Judge*.

Endorsed: Memorandum Decision on the Merits. Filed U. S. Circuit Court, Western District of Washington, Jan. 12, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Decree.

This cause came on to be further heard at this term upon the pleadings and proofs and upon the briefs submitted by counsel, and thereupon upon consideration thereof:

It is Ordered, Adjudged and Decreed, That the homestead patent heretofore issued by the complainant through its officers on the 2nd day of November, 1904, to Zachariah Turner, purporting to convey title to the east one-half (E½) of the east one-half (E-½) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, be, and the same is hereby cancelled, annulled and set aside:

And that the homestead patent heretofore issued by the complainant through its officers on the 1st day of November, 1904, to Odin A. Olsen, purporting to convey title to the north-west quarter (NW-¼) of Section thirty-four (34), Township twenty-two (22) north of range seven (7) East of the Willamette Meridian, be and the same is hereby cancelled, annulled and set aside:

265

And that the homestead patent heretofore issued by the com-

plainant through its officers on the 12th day of December, 1904, to Robert L. Barbee, purporting to convey title to the southwest quarter (SW-¼) of section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, be and the same is hereby cancelled, annulled and set aside:

And that the homestead patent heretofore issued by the complainant through its officers on the 3rd day of August, 1907, to Thomas B. Forsyth, purporting to convey title to the west one-half (W-½) of the north-east quarter (NE-¼), and the west one-half (W½) of the south-east quarter (SE-¼) of Section thirty-four (34), Township twenty-two (22), North of Range Seven (7), be and the same is hereby cancelled, annulled and set aside.

And it is Further Ordered, Adjudged and Decreed, That the defendant and all persons claiming by, through or under it, be foreclosed of all interest, right, or title to said Section thirty-four (34), Township twenty-two (22), North of Range seven (7) East of the Willamette Meridian, and that the complainant is, and it is hereby decreed to be the legal and equitable owner of said lands, and that its title be confirmed and quieted, and that the complainant do have and recover its costs of the defendant.

Done this 25th day of February, 1911.

C. H. HANFORD, *Judge.*

To the above decree, and each and every part thereof, the defendant prays an exception, which exception is hereby allowed.

C. H. HANFORD, *Judge.*

Endorsed: Decree. Filed U. S. Circuit Court, Western District of Washington, Feb. 25, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

266 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit and Order Allowing the Same.

To the Honorable the Circuit Court of the United States for the Western District of Washington:

The above named defendant, Washington Securities Company, conceiving itself aggrieved by the decree made and entered by said Court on the 25th day of February, 1911, in the above entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in

the assignment of errors filed herein, and prays that this appeal may be allowed, that citation issue to the complainant herein upon said appeal, and that a transcript of the record, proceedings and papers on which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 2nd day of March, A. D. 1911.

CHARLES P. SPOONER,
H. R. CLISE,
Solicitors for Defendant.

The foregoing claim of appeal is allowed.
Dated this 2d day of March, A. D. 1911.

C. H. HANFORD,
United States District Judge,
Presiding in the Above Named Court.

Endorsed: Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and order allowing the same. Filed U. S. Circuit Court, Western District of Washington, Mar. 2, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

267 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Assignment of Errors.

Now on this 27th day of February, A. D. 1911, comes Washington Securities Company, defendant in the above entitled cause, by Charles P. Spooner and H. R. Clise, its solicitors, and says that the decree in said cause is erroneous and against the just rights of the above named defendant, and that in the record and proceedings of the above named cause and in the final decree made and entered therein on the 25th day of February, 1911, there was manifest error. And for errors the said defendant assigns the following:

I.

The court erred in finding that Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7) East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entries of Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

II.

The court erred in finding that Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Wil-

lamette Meridian, was known coal land at the dates of the issuance of patents to said Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

III.

The court erred in finding that Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at or prior to the date of the purchase of said section by the defendant above named.

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IV.

The court erred in finding that the East half (E. ½) of the East half (E. ½) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7) East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Zachariah Turner.

V.

The Court erred in finding that the Northwest quarter (NW¼) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Odin A. Olsen.

VI.

The Court erred in finding that the Southwest quarter (SW¼) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Robert L. Barbee.

VII.

The court erred in finding that the West half (W-½) of the Northeast quarter (NE-¼) and the West half (W-½) of the Southeast quarter (SE¼) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Thomas B. Forsyth.

VIII.

The court erred in finding that the East half (E½) of the East half (E-½) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian was known coal land at and prior to the second day of November, 1904.

IX.

The court erred in finding that the Northwest quarter (NW-¼) of Section Thirty-four (34), Township Twenty-two (22),
269 North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the first day of November, 1904.

X.

The Court erred in finding that the Southwest quarter (SW-¼) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the twelfth day of December, 1904.

XI.

The court erred in finding that the West half (W-½) of the Northeast quarter (NE-¼) and the West half (W-½) of the Southeast quarter (SE-¼) of Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, was known coal land at and prior to the third day of August, 1907.

XII.

The Court erred in finding that the several patentees entered into possession of said section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian and excluded therefrom the "coal syndicate" by force and threats of violence.

XIII.

The court erred in finding that there was no formal contest between the "syndicate" and the patentees, and that the land office, without permitting the introduction of evidence, arbitrarily rejected the coal claim and that no appeal was taken.

XIV.

The court erred in finding that the defendant, at the time of purchasing the land, had actual knowledge that when the commutation entries were allowed the land was known to be coal land and should have been sold as coal land only, to purchasers authorized by law to make entry of coal land in limited quantities as prescribed
270 by law, and knew that the officers of the land office had, contrary to their duty, allowed the entries and issued patents as if the land were rightfully classed as non-mineral land, and with that knowledge purchased the land from patentees, paying therefor what appeared to be a fair price for undeveloped coal land.

XV.

The court erred in finding that the defendant was not a bona fide purchaser of Section thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, but acquired it with knowledge of the facts tainting the title.

XVI.

The court erred in decreeing that the patents to Section Thirty-four (34), Township Twenty-two (22), North of Range Seven (7), East of the Willamette Meridian, be cancelled, annulled and set

aside, and that the defendant and all persons claiming under it be foreclosed of all interest, right or title to said section, and that the complainant is the legal and equitable owner of said lands and confirming and quieting its title thereto.

XVII.

The court erred in not entering a decree dismissing complainant's complaint.

XVIII.

The court erred in taxing the costs of this action against the defendant and in not taxing the costs thereof against the complainant.

CHARLES P. SPOONER,
H. R. CLISE,
Solicitors for Defendant.

Endorsed: Assignment of Errors. Filed U. S. Circuit Court, Western District of Washington, Feb. 27, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

271 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Order Fixing Amount of Cost Bond.

This cause coming on for hearing upon the application of complainant to have the Court fix the amount of the cost bond, and the Court being duly advised in the premises:

It is Hereby Ordered and Decreed that the amount of the cost bond of the defendant on appeal herein be and hereby is fixed at the sum of Two Hundred and Fifty Dollars ($250), which shall be for costs only and shall not operate as a supersedeas bond.

Done in open Court this 2nd day of March, A. D. 1911.

C. H. HANFORD,
United States District Judge,
Presiding in the Above-named Court.

Service of copy of the foregoing order is hereby admitted this 2d day of March, A. D. 1911.

ELMER E. TODD,
Solicitor for Complainant.

Endorsed: Order fixing amount of Cost Bond. Filed U. S. Circuit Court, Western District of Washington, Mar. 2, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

272 United States Circuit Court, Western District of Washington. Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Bond on Appeal.

Know All Men by these Presents: That we, Washington Securities Company, as principal, and J. W. Clise and C. J. Smith, as sureties, are held and firmly bound unto the United States of America, complainant and appellee, in the sum of Two Hundred and Fifty Dollars ($250.00), for the payment of which sum, well and truly to be made, we jointly and severally bind ourselves, our heirs, personal representatives and assigns, firmly by these presents.

Sealed with our seals and dated this sixth (6) day of March, A. D. 1911.

The Condition of this Obligation is Such that Whereas, in the above entitled Court and action an order and decree was entered on the 25th day of February, A. D. 1911, in accordance with the prayer of the complaint, and the said Washington Securities Company having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said decree, and a citation directed to the President of the United States is about to be issued, citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California:

Now the Condition of the above Obligation is such that,

If the said Washington Securities Company shall prosecute its said appeal to effect and answer all costs that may be awarded against it, if it fails to make its plea good, then the above
273 obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] WASHINGTON SECURITIES COMPANY.
By J. W. CLISE, [SEAL.]
Its President, and
L. S. BROCKWAY, [SEAL.]
Its Secretary.
J. W. CLISE, [SEAL.]
C. J. SMITH. [SEAL.]

UNITED STATES OF AMERICA,
Western District of Washington, ss:

J. W. Clise and C. J. Smith being first duly sworn, each for himself deposes and says:

That he is a resident and a householder and freeholder within said Western District of Washington, and that he is worth the

amount specified in the foregoing bond over and above all his debts and liabilities, exclusive of property exempt from execution.

J. W. CLISE.
C. J. SMITH.

Subscribed and sworn to before me this 6th day of March, A. D. 1911.

[SEAL.] H. R. CLISE,
Notary Public in and for the State of Washington, Residing at Seattle.

The foregoing bond is hereby approved by me this 8th day of March, A. D. 1911.

C. H. HANFORD,
United States District Judge, Presiding in the Above-named Circuit Court.

Service of the foregoing bond upon the said complainant this 7th day of March, A. D. 1911, is hereby acknowledged.

ELMER E. TODD,
Solicitor for Complainant.

Endorsed: Bond on Appeal. Filed U. S. Circuit Court, Western District of Washington, Mar. 8, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

274 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

WASHINGTON SECURITIES COMPANY, a Corporation, Defendant and Appellant,
vs.
UNITED STATES OF AMERICA, Complainant and Appellee.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America and Elmer E. Todd, United States Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office at the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Washington Securities Company, a corporation, is appellant, and you, the said United States of America and Elmer E. Todd, United States

Attorney, are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 2d day of March, A. D. 1911, and of the independence of the United States the one hundred and thirty-fifth year.

C. H. HANFORD,
United States District Judge for the Western District of Washington, Presiding in the Circuit Court.

[SEAL.] SAM'L D. BRIDGES,
Clerk of the United States Circuit Court for the Western District of Washington, Northern Division.
By W. D. COVINGTON, *Deputy.*

275 Service of the foregoing citation upon said appellee this 2nd day of March, A. D. 1911, is hereby acknowledged.

ELMER E. TODD,
Solicitor for said United States of America, Appellee.

Endorsed: Citation on Appeal. Filed U. S. Circuit Court, Western District of Washington, Mar. 2, 1911, Sam'l. D. Bridges, Clerk, W. D. Covington, Deputy.

United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant,
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant.

Praecipe for Record on Appeal.

To the Clerk of the Above Named Court:

You will please for-with prepare, certify and transmit to the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, a record on the pending appeal of the defendant, Washington Securities Company, from the decree lately entered in favor of the complainant in the above entitled cause, on the 25th day of February, 1911, which record shall consist of the following files, records and proceedings in said cause, to-wit:

Complainant's Bill of Complaint.

Answer of Defendant.

Replication.

All proofs, including testimony taken before the Master, with all exhibits and depositions.

Memorandum Opinion on the Merits.

Decree, filed the 25th day of February, 1911.

Petition of Defendant for allowance of appeal from said decree together with the Allowance of said Appeal, filed the 2nd day of March, 1911.

276 Assignment of Errors, filed the 27th day of February, 1911.

Order fixing amount of Cost Bond, filed the 2nd day of March, 1911.

Cost Bond on Appeal, filed the 8th day of March, 1911.

Citation (Original) returned and filed the 2d day of March, 1911.

Præcipe for Record on Appeal, filed the 2d day of March, 1911.

C. P. SPOONER,
H. R. CLISE,
Solicitors for Defendant and Appellant.

Contents of the above præcipe contains a complete record of all proceedings in the above cause necessary for hearing on appeal.

C. P. SPOONER,
H. R. CLISE,
Solicitors for Defendant and Appellant.

Endorsed: Præcipe for Record on Appeal. Filed U. S. Circuit Court, Western District of Washington, Mar. 2, 1911, Sam'l. D. Bridges, Clerk, W. D. Covington, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1706.

UNITED STATES OF AMERICA, Complainant and Appellee.
vs.
WASHINGTON SECURITIES COMPANY, a Corporation, Defendant and Appellant.

Clerk's Certificate to Transcript of Record.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, Sam'l. D. Bridges, Clerk of the Circuit Court of the United States, for the Western District of Washington, do hereby
277 certify the foregoing two hundred seventy-nine printed pages, numbered from 1 to 279, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause, as the same remain of record and on file in the office of the Clerk of the said Court, and that the same constitutes the record on appeal from the order, judgment and decree of the Circuit Court of the United States, for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing record on appeal is the sum of $475.70, and that the said sum has been paid to me by C. P. Spooner and H. R. Clise, solicitors for Defendant and Appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court at Seattle, in said District, this 22nd day of April, 1911.

[SEAL.] SAM'L D. BRIDGES, *Clerk*,
By W. D. COVINGTON,
Deputy Clerk.

278 United States Circuit Court, Western District of Washington, Northern Division.

No. 1706.

WASHINGTON SECURITIES COMPANY, a Corporation, Defendant and Appellant,
vs.
UNITED STATES OF AMERICA, Complainant and Appellee.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America and Elmer E. Todd, United States Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office at the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Washington Securities Company, a corporation, is appellant, and you, the said United States of America and Elmer E. Todd, United States Attorney, are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 2d day of March, A. D. 1911, and of the independence of the United States the one hundred and thirty-fifth year.

C. H. HANFORD,
United States District Judge for the Western District of Washington, Presiding in the Circuit Court.

[SEAL.] SAM'L D. BRIDGES,
Clerk of the United States Circuit Court for the Western District of Washington, Northern Division,
By W. D. COVINGTON, *Deputy.*

279 Service of the foregoing citation upon said appellee this 2d day of March, A. D. 1911, is hereby acknowledged.

ELMER E. TODD,
Solicitor for said United States of America, Appellee.

Endorsed: Citation on Appeal. Filed U. S. Circuit Court, Western District of Washington, March 2, 1911, Sam'l D. Bridges, Clerk, W. D. Covington, Deputy.

280 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and seventy-nine (279) pages, numbered from and including one (1) to and including two hundred and seventy-nine (279), to be a full, true and correct copy of the Printed Transcript of Record upon Appeal from the United States Circuit Court for the Western District of Washington, Northern Division, in the above-entitled case, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighth day of October, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

281 & 282 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

283 At a stated term, to-wit, the October Term, A. D. 1911, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and eleven.

Present:

Honorable William B. Gilbert, Circuit Judge;
Honorable Erskine M. Ross, Circuit Judge;
Honorable Charles E. Wolverton, District Judge.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Order of Submission.

Ordered, appeal in the above-entitled cause argued by Messrs. H. R. Clise, and Charles P. Spooner, counsel for the appellant, and by Mr. United States Attorney Elmer E. Todd, counsel for the appellee, and submitted to the Court for consideration and decision.

284 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the United States Circuit Court for the Western District of Washington, Northern Division.

Before Gilbert and Ross, Circuit Judges, and Wolverton, District Judge.

By its bill filed in the court below the Government sought the cancellation of four certain patents covering Section 34, Township 22 north, of Range 7 east, of the Willamette Meridian, in the Seattle Land District, State of Washington, which were issued to four named individuals, for one quarter of a section each, under and by virtue of the Homestead Law of the United States, the title to which subsequently passed to the appellant corporation from the patentees. The bill charges that all of the land mentioned was at all of the times therein referred to known mineral de-
285 posits of coal in such quantities and of such character as rendered the land more valuable for the coal it contained than for agricultural purposes, which facts each of the patentees well knew at the time he made application to purchase a quarter section thereof under the Homestead Law, and at the time of final proof and the receipt of the patent, and all of which facts the appellant corporation well knew, through its agents and officers at the time of its purchase; and further knew that all of the said land was known mineral land at the time the said respective patentees made application to purchase it under the Homestead Laws, and at the time they made their proofs under and pursuant to such applications and at the time they received the said patents. The bill makes similar allegations in respect to each of the patentees; it will be sufficient to state the substance of one of them, which is as follows: That on September 10, 1900, one Zachariah Turner filed with the proper officers of the United States Land Office at the City of Seattle, Washington, an application in writing and entered as a homestead the east half of the east half of Section 34 of Township 22 North, of Range 7 East, of the Willamette Meridian, and at the time of filing the same also filed his non-mineral affidavit in accordance with the duly established rules and regulations of the Land Office, in which affidavit he stated, among other things, that he was well acquainted with the character of the land applied for and that there was not, to his knowledge, within the limits thereof, any deposit of coal; that thereafter, on the 9th day of January,

1902, the said Turner desiring to commute his homestead entry upon the said land so applied for, made and filed in the said land office his final proofs, together with the nonmineral affidavit required by the rules and regulations of the Commissioner
286 of the General Land Office, and in his testimony upon final proof in the said Land Office testified upon oath, among other things, that the said land was most valuable for agricultural purposes, and that there was not any indication of coal on it; that the affidavit so made and filed and the testimony so given, were false and fraudulent, as the said Turner well knew at the time, and were made and given by him for the purpose of fraudulently obtaining from the United States the title to said land; that the land was unfit for agricultural purposes, and was of no value therefor, but did contain valuable workable deposits of coal, all of which the said Turner at the time well knew; that on the 9th day of January, 1902, the officers of the Seattle Land Office, based upon the said final proof, through mistake and inadvertence and without authority of law, issued to the said Turner a receiver's receipt for the land so applied for by him, and thereafter, to-wit, November 2d, 1904, a patent was issued to him by the United States conveying the said land, which patent was issued through mistake and inadvertence on the part of the officers of the Land Office, and without authority of law; that on the 10th day of October, 1906, the said Turner and his wife, Mary Turner, by deed conveyed the said land to one C. J. Smith, who was at the time the agent of the defendant corporation for the purchase of the said land, and who acquired it solely for the use and benefit and in trust for the defendant to the suit, which corporation still holds the legal title thereto; that the said defendant corporation and its said agent well knew at the time of such purchase, and for a long time prior thereto, that the said land contained valuable deposits of coal and was mineral land, and was unfit for agricultural purposes and of no value therefor,
287 and was not subject to entry under the Homestead Laws of the United States.

The bill contains similar allegations in respect to all of the other portions of the section in question; it contains no charge of fraud against the defendant company or its agent, nor against any of the officers of the Land Office.

The defendant company by its answer admits, among other things, that the section of land in question contained and still contains valuable and workable deposits of coal, and that the patents were issued as alleged, and that the land covered by them was thereafter conveyed by the patentees to Smith as agent of the defendant company and was subsequently conveyed by him to the company, which still holds the legal title thereto. In other respects the answer put in issue the averments of the bill.

Ross, Circuit Judge, after stating the case as above, delivered the opinion of the court:

There are some peculiar features about this case. The record contains undisputed evidence, and an abundance of it, to the effect that coal was discovered in and upon the land in question in the year

1882, and that shortly thereafter an association of individuals was formed for the purpose of developing the coal deposits, which efforts continued for a number of years, and in which efforts about eight thousand dollars were expended. One of that syndicate was a man named John L. Howard, who took in his own name, but for the benefit of the Oregon Improvement Company, a corporation of which he was at the time the manager, a one-third interest in that mining venture. The evidence further shows that each of the patentees had been engaged in mining in the vicinity of the land in question, which is in the midst of a well-known
288 coal-mining region, and the evidence leaves no room for doubt that each of the so-called homesteaders well knew, at the time he made his application for the entry of a portion of the land as a homestead, that it was not subject to entry under the Homestead Law but was well-known mineral land, and that their affidavits in respect to the character of the land were false and fraudulent, as was their testimony on final proof. As against them, therefore, there could be no doubt of the right of the Government to a decree cancelling the patents issued to them. The only question is, is the defendant company, appellant here, entitled to protection as an innocent purchaser?

One of the peculiar features to which reference has been made is that while the homestead applications were pending in the local land office it seems to have been brought to the attention of its officers, in some way not shown, and also in some undisclosed way to the Commissioner of the General Land Office (as we find in one place in the record a reference to the vacation of a suspension of the homestead entries by that officer) that the land in question was claimed to be mineral land. For instance, it appears from the testimony of one of the Government's witnesses, Sidney J. Williams, that shortly after the land was surveyed and just after the filing of the homestead applications, he sought to procure a portion of it under the law governing the disposition of mineral lands, and tendered to the officers of the local land office the Government price for such land, which application and tender they rejected. His testimony in part is as follows:

"Q. But did you file on that quarter section while others were filing in conjunction with you, filing on other quarters on that
289 section?

"A. When I made the filing and made the tender of the money, I filed alone at that time.

"Q. What year was that?

"A. I don't remember the year. It was about——

"Q. (Interrupting.) '96 or '7?

"A. I think it was, about; I don't know; the records show the filing. I don't remember.

"Q. It was shortly after the land was surveyed, wasn't it?

"A. I don't remember just exactly when it was, but the record shows. I made my filing and I made my tender of the money to the office here.

"Q. Any way you filed on it before—what was the condition, at what stage were these homesteaders in when you filed?

"A. They had just filed.

"Q. They had just filed?

"A. They had filed on it also, but hadn't made their final proof.

"Q. Did you keep your filing good?

"A. Yes, sir, I made a tender of the $3,200 to the Land Office.

"Q. Then you contested their filing, did you?

"A. No, it didn't go any further. They refused to accept my money, the Land Office here it was more valuable for other purposes, and gave me back my money.

"Q. And what, if any, showing did you make to substantiate your filing?

"A. I made the same talk I have made here about the coal being there.

"Q. In what way did you make that showing?

"A. I had witnesses.

"Q. That was before the office here?

"A. Yes, sir.

"Q. And as the result of that showing they refused to accept your tender?

290 "A. Returned——

"Q. (Interrupting.) And turned down your filing?

"A. Yes, sir."

The witness then testified that he thereupon dropped the matter.

The record contains no evidence that there was any formal contest in the land office between any of the mineral claimants and the homesteaders, or that any proof was introduced before those officers respecting the true character of the land. It does, however, clearly show that the defendant company's agent, in acquiring the patentees' title to the land covered by the patents, well knew that before and at the time of the filing of the homestead applications the land was claimed to be mineral land, for the record shows that he was one of the officers of the Oregon Improvement Company, succeeded Howard as manager of that company, and personally directed for several years the payment of that company's one-third part of the expenses incurred by the syndicate in developing the coal veins upon the land. The contention on the part of the appellant company that that knowledge had passed from its agent's mind at the time he negotiated on behalf of the appellant for the title to the property conveyed by the patents cannot be sustained in view of the evidence.

Mr. C. J. Smith was that agent. According to his own testimony, from 1891 to about 1898, he was general manager of the Oregon Improvement Company, which company, in addition to its railroad and steamship business, owned and operated the Franklin and Newcastle coal mines in the vicinity of the land in question, and which company, through its former manager, Howard, had secured a one-third interest in the undertaking to acquire the section of land here in question as coal land, but which the patentees

obtained by the fraudulent means already indicated. Mr. Smith, who subsequently acquired the title thus conveyed by the
291 patents for the appellant company and transferred the land to it, was examined as a witness on behalf of the Government, and then testified as follows:

"Q. Mr. Smith, at the time you purchased this land from the homesteaders, what position did you occupy with the Washington Securities Company?

"A. The Washington Securities Company was not formed at that time, it was just in process of being formed.

"Q. It was in process of being formed?

"A. Yes.

"Q. And you purchased this land for the corporation which was to be formed, did you not?

"A. Yes.

"Q. And with its funds?

"A. Yes, sir.

"Q. What position did you hold in the Washington Securities Company upon its organization?

"A. Vice president.

"Q. What other position—were you one of the trustees or directors?

"A. Yes.

"Q. Were you one of the original promoters of the company?

"A. Well, I subscribed to the stock at the beginning, at the formation of the company.

"Q. Did you interest the corporation in this particular piece of property?

"A. Well, I brought it to their attention, yes.

"Q. And you are still, and at the time you deeded the property over to the company you were the vice president and one of the trustees?

"A. Yes, sir.

"Q. And you had bought it solely for the use of the corporation which was afterwards to be formed?

"A. Yes.

"Q. During the time you were connected with the Oregon Improvement Company did you visit the Franklin mine from time to time?

"A. Yes, sir.

292 "Q. How often would you say?

"A. Well, I don't remember; whenever it was necessary.

"Q. Once a month?

"A. Well, it was—the periods were too irregular.

"Q. The Oregon Improvement Company owned the railroad that ran up there at that time?

"A. Yes, sir."

Being asked on cross-examination in what way he brought the property to the attention of the appellant, and in what way it was brought to his attention, the witness answered:

"A man by the name of Braggs (afterwards given as Brooks)

came to me and told me he had some coal land, wanted to know if I was interested in coal, and I asked him where the land was. He told me it was in section 34, township 22, seven, I think it was, and I told him that I was not, that I didn't believe that I cared to be interested, and he asked me if there was anybody that he could obtain as a purchaser, that he had an option on the land. I referred him to C. R. Collins, who at that time was hunting for some coal land with the expectation of getting coal that would be adaptable for gas purposes. He had some negotiations with Mr. Collins and Mr. Collins came to me and said that he would take it if I would take an interest, which I declined to do; and Mr. Collins took it up with some people in the east, and, not obtaining the necessary funds, told Mr. Braggs that he was unable to carry out his plans; and Braggs came back to me again, and in the meantime the Washington Securities Company was about to be formed and their stock was then being subscribed, and I referred Mr. Braggs to the Securities Company. He had a talk with Mr. Clise, who expected to be the president of the company and who was promoting it—forming it, and Mr. Clise discussed the question with me and Mr.
293 Braggs, and I told him that—I gave him the name of an engineer—mining engineer, that would exploit the land, that is, would make examination, and that I knew nothing personally about the land myself, but would rely upon a report that this man would make; and, at my suggestion, the man was employed to go there and look the land over. After he had looked it over the matter of purchase was taken up between myself and Mr. Braggs and an option was taken for a sufficient length of time to enable us to verify the report of the engineer, and, upon the verification of those reports and the abstract of title, the land was purchased."

The witness when subsequently called on behalf of the defendant company gave substantially the same testimony as to what occurred between him and Braggs or Brooks, and further testified, on cross-examination, that as manager of the Oregon Improvement Company, he paid that company's proportion of the expenses of "keeping up the coal declaratory statements" on the land, and that when he purchased the land from the homesteaders he had an abstract of the title made and examined by the attorney for the defendant company, who was also one of its directors.

Being asked by the company's attorney what, if any, effect his prior information in respect to the character of the land had on his mind at the time Brooks approached him on the subject of purchasing the property, and whether he knew that the patented land was the same land in respect to which he had made the payments, the witness answered:

"He informed me it was section 34, located near Kanascott, and he asked whether I knew about it, and I told him no, and he went on to describe then its location with reference to other
294 mines there beyond Franklin and within the range of Kangley and Drum and Alta and some other pieces of property that had been more or less exploited in that part of the country, and I told him then that I had an indistinct remembrance that that

had been brought to my attention some years before, but that, I had never seen any report or examination of it, I was not aware of the value of it, and I did not know whether it was coal or not, and I did not care to go any further with it, that was as to myself personally. When the company was formed I referred it to them and they desired first an examination. Upon that examination they made their purchase.

"Q. Was the examination made based in any way upon what you have stated existed away back in '90 and '91?

"A. No, sir; in fact, I did not know there were tunnels on the property.

"Q. How is that?

"A. In fact I did not know whether there were any tunnels or open prospects on the property, or that there ever had been.

"Q. When did you first find that out?

"A. When the examination was made they took some—the expert took some men with him, and in looking over the ground they uncovered some prospect holes and dug out some tunnel that had been more or less filled with water and debris.

"Q. I wish you would state whether or not, from the report that you had from the men whom you sent there and from such other knowledge you had, whether or not that property, as coal property, is anything more at the present time than a prospect?

"A. Well; no, it is a probability. It could not be determined as a mine, and in fact, I was loath, even after the report was made, to take hold of it until I had secured some additional in-
295 formation with reference to a rock dyke that runs fairly close to that property up there, and which, in my opinion, is the reason why one of the contiguous pieces of coal property was worthless. The rock dyke having practically coked the coal in the mine, and rendered it entirely worthless."

We are of the opinion that Smith's own testimony shows that at and before his purchase of the property from the homesteaders for the Securities Company he knew that it was the same land he had claimed to be coal land while manager of the Oregon Improvement Company, and that his actions above indicated in respect to the land were then present to his mind. The abstract of title necessarily showed that the land was acquired from the Government by the proposd sellers under and by virtue of its homestead laws. There is, therefore, nothing in the case of Harrington v. United States, 11 Wall, 356, precluding the affirmance of the judgment.

That coal lands are mineral lands within the meaning of the United States statutes is well settled, and that land known at the time to be mineral land cannot be legally acquired under and by virtue of the homestead law of the United States is also too well settled to need the citation of authorities.

The appellant company not being an innocent purchaser, and the patents in question having been acquired by the gross fraud of the patentees, the decree annulling them is affirmed.

(Endorsed:) Opinion. Filed Feb. 13, 1912, F. D. Monckton, Clerk.

296 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and hereby is, affirmed.

(Endorsed:) Decree. Filed and entered February 13, 1912. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

297 In the United States Circuit Court of Appeals for the Ninth Circuit.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Petition for Appeal to the Supreme Court of the United States.

Comes now the above named Washington Securities Company, appellant, by its attorneys undersigned, and respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a judgment or decree has therein been rendered by said Court on the 13th day of February, 1912, affirming the decree of the Circuit Court of the United States for the Western District of Washington, Northern Division, and that the matter in controversy in said suit exceeds one thousand dollars, besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Ninth Circuit has not final jurisdiction, and is a proper cause to be reviewed by the Supreme Court of the United States on Appeal.

Wherefore, the appellant prays that an appeal be allowed it in said cause, directing the Clerk of the United States Circuit Court of Ap-

peals for the Ninth Circuit to send the record and proceed-
298 ings of said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the Assignments of Error herewith filed by the appellant may be reviewed and corrected according to the laws and customs of the United States.

(Signed) CHARLES P. SPOONER,
H. R. CLISE,
C. K. POE,
Attorneys for Appellant.

Office and Postoffice Address 405 New York Building, Seattle, Washington.

(Endorsed:) Petition for Appeal to the Supreme Court of the United States. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

299 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

Comes now the Appellant, the Washington Securities Company, a corporation, by its attorneys undersigned, and says:

That in the record and proceedings herein there is manifest error, and that the United States Circuit Court of Appeals for the Ninth Circuit erred in this, to-wit: .

I.

In affirming and not reversing the decision and decree of the United States Circuit Court for the Western District of Washington, Northern Division.

II.

In holding and deciding that the decision of the Land Department rejecting the claims of the mineral claimants was not a final adjudication of that question.

III.

In holding and deciding that the appellant was chargeable with any knowledge obtained or acquired by Mr. C. J. Smith prior to his employment by or association with this appellant

300 & 301 IV.

In holding and deciding that C. J. Smith had knowledge of the mineral character of the land at or prior to the date of the homestead entries, or at the time of the issuance of patents therefor.

V.

In holding and deciding that Section thirty-four (34) Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at or prior to the date of the homestead entries of Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

VI.

In holding and deciding that Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at the dates of the issuance of patents to said Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

VII.

In holding and deciding that Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian was known coal land at and prior to the date of purchase of said section by the defendant above named.

VIII.

In holding and deciding that the East half (E½) of the East half (E½) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian,
302 was known coal land at and prior to the date of the homestead entry thereon by Zachariah Turner.

IX.

In holding and deciding that the Northwest quarter (N.W.¼) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Odin A. Olsen.

X.

In holding and deciding that the Southwest quarter (S. W. ¼) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Robert L. Barbee.

XI.

In holding and deciding that the West half (W½) of the Northeast quarter (N. E. ¼) and the West half (W.½) of the Southeast quarter (S. E. ¼) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Thomas B. Forsyth.

XII.

In holding and deciding that the East half (E.½) of the East half (E.½) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the second day of November, 1904.

303 XIII.

In holding and deciding that the Northwest quarter (N.W.¼) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the first day of November, 1904.

XIV.

In holding and deciding that the Southwest quarter (S.W.¼) of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the twelfth day of December, 1904.

XV.

In holding and deciding that the West half (W.½) of the Northeast quarter (N. W. ¼) and the West half (W. ½) of the Southeast quarter (S.E.¼) of Section thirty-four (34) Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, was known coal land at and prior to the third day of August, 1907.

XVI.

In holding and deciding that the several patentees entered into possession of said Section thirty-four (34) Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, and excluded therefrom the "coal syndicate" by force and threats of violence.

XVII.

In holding and deciding that there was no formal contest between the "syndicate" and the patentees, and that the land office, without permitting the introduction of evidence arbitrarily rejected
304 the coal claim and that no appeal was taken.

XVIII.

In holding and finding that the defendant, at the time of purchasing the land, had actual knowledge that when the commutation entries were allowed the land was known to be coal land and should have been sold as coal land only, to purchasers authorized by law to make entry of coal land in limited quantities as prescribed by law, and knew that the officers of the land office had, contrary to their duty, allowed the entries and issued patents as if the land were rightfully classed as non-mineral land, and with that knowledge

purchased the land from patentees, paying therefor what appeared to be a fair price for undeveloped coal land.

XIX.

In holding and deciding that the defendant was not a bona fide purchaser of Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, but acquired it with knowledge of the facts tainting the title.

XX.

In holding and decreeing that the patents to Section thirty-four (34), Township twenty-two (22) North of Range seven (7) East of the Willamette Meridian, be cancelled, annulled and set aside, and that the defendant and all persons claiming under it be foreclosed of all interest, right or title to said section, and that the complainant is the legal and equitable owner of said lands
305 and confirming and quieting its title thereto.

XXI.

In not entering a decree dismissing complainant's complaint, and affirming the United States Circuit Court for the Western District of Washington, Northern Division.

XXII.

In taxing the costs of this action against the defendant and in not taxing the costs thereof against the complainant.

(Signed) H. R. CLISE,
(Signed) C. K. POE,
(Signed) CHARLES P. SPOONER,
Attorneys for Appellant.

(Endorsed:) Assignment of Errors. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

306 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Affidavit of L. S. Brockway Re Amount in Controversy.

UNITED STATES OF AMERICA,
State of Washington, County of King, ss:

L. S. Brockway, of Seattle, King County, Washington, being first duly sworn, on oath says:

That he is secretary of the above named appellant corporation, and is personally acquainted with its affairs, and authorized and qualified to make this oath on its behalf.

That the subject matter of this suit, and the property described in the patents sought to be cancelled by the appellee, exceeds the sum of ten thousand dollars.

That said property is in controversy in this suit and the amount so in controversy exceeds the sum of ten thousand dollars, exclusive of interest and costs.

(Signed) L. S. BROCKWAY.

Subscribed and sworn to before me this 12th day of September, 1912.

307 [NOTARIAL SEAL.] (Signed) H. R. CLISE,
Notary Public in and for the State of Washington, Residing at Seattle.

(Endorsed:) Affidavit of L. S. Brockway Re Amount in Controversy. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

308 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Order Allowing Appeal to Supreme Court U. S.

It is hereby ordered that the appeal in the above entitled cause, to the Supreme Court of the United States, be and hereby is allowed as prayed.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Order Allowing Appeal to Supreme Court U. S. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

309 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Petition for Order Fixing Amount of Bond on Appeal to Supreme Court U. S.

Comes now the above named appellant, and respectfully petitions this court for an order fixing the amount of its cost bond on appeal to the Supreme Court of the United States.

H. R. CLISE &
C. K. POE,
Attorneys for Appellant.

(Endorsed:) Petition for Order Fixing Amount of Bond on Appeal to Supreme Court U. S. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

310 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Order Fixing Amount of Bond on Appeal to Supreme Court U. S.

This cause having come on in its order to be heard, upon the petition of the appellant for an order fixing the amount of its cost bond on appeal to the Supreme Court of the United States upon its appeal of the above entitled cause,

It is ordered that the amount of said bond be and the same hereby is fixed at the sum of one thousand dollars ($1,000).

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Order Fixing Amount of Bond on Appeal to Supreme Court U. S. Filed Sep. 14, 1912. F. D. Monckton, Clerk.

311 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Bond on Appeal to Supreme Court U. S.

Know All Men by these Presents, That we, the Washington Securities Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, principal, and Royal Indemnity Company of New York, a corporation organized under the laws of the State of New York and duly authorized to transact a general surety business in the State of Washington, as surety, are held and firmly bound unto the United States of America in the sum of One Thousand ($1,000) Dollars, to be paid to said obligee, for the payment of which well and truly to be made, we bind ourselves and our successors, jointly and severally by these presents.

Sealed with our seal- and dated this 16th day of September, 1912.

Whereas, the above named Washington Securities Company has appealed to the Supreme Court of the United States, to reverse an order and decree filed, made and rendered by the Circuit
312 Court of Appeals of the United States, for the Ninth Circuit in that certain cause pending in said Court, wherein the Washington Securities Company, a corporation, is appellant, and the United States of America is appellee.

Now, therefore, the condition of this obligation is such that, if the above named Washington Securities Company, appellant, shall prosecute said appeal to effect and answer all damages and costs if it fails to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and virtue.

[SEAL.] WASHINGTON SECURITIES COMPANY.
(Signed) By L. S. BROCKWAY.
ROYAL INDEMNITY COMPANY.
(Signed) By EDWIN A. STROUT.
Attorney in Fact.
(Signed) By ROBERT C. GOODALE.
[SEAL.] *Attorney in Fact.*

STATE OF WASHINGTON,
County of King, ss:

On this 16th day of September, 1912, before me, W. R. C. Cocke, a Notary Public in and for said County and State aforesaid, residing therein, duly commissioned and sworn, personally appeared Edwin

A. Strout and Robert C. Goodale, known to me to be the Attorney in Fact and Consulting Attorney respectively of the Royal Indemnity Company, the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both acknowledged to me that such corporation executed the same.

313 In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] (Signed) W. R. C. COCKE,
Notary Public in and for the State of Washington, Residing at Seattle.

STATE OF WASHINGTON,
County of King, ss:

On this 16 day of September, 1912, before me appeared L. S. Brockway, to me personally known, who being by me duly sworn did say that he is the Secretary of the Washington Securities Company, a corporation organized and existing under the laws of the State of Washington; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was executed in behalf of said corporation, by authority of its Board of Directors, and the said L. S. Brockway acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

[NOTARIAL SEAL.] (Signed) H. R. CLISE,
Notary Public in and for the State of Washington, Residing at Seattle.

The foregoing bond was presented to me this 16 day of September, 1912, and was this day by me approved, as to form, amount and sufficiency of security.

314 (Signed) WM. B. GILBERT,
United States Circuit Judge, Ninth Circuit.

(Endorsed:) Bond on Appeal to Supreme Court U. S. Filed Sep. 17, 1912. F. D. Monckton, Clerk.

315 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Stipulation Re Transcript of Record on Appeal to Supreme Court U. S.

It is hereby stipulated, by and between the undersigned, attorneys for the respective parties hereto, that the attached and foregoing præcipe contains all matters, papers and things requisite or necessary to a hearing and proper determination of the above entitled cause upon the appeal of the Washington Securities Company to the Supreme Court of the United States.

Dated this 24 day of September, 1912.

(Signed) H. R. CLISE &
C. K. POE,
Attorneys for Appellant.

(Signed) B. W. CAINES,
Attorney for Appellee.

316 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Præcipe for Transcript on Appeal to Supreme Court U. S.

To the Clerk of the above named court:

You will please forthwith prepare, certify and transmit to the office of the Clerk of the Supreme Court of the United States, at Washington, District of Columbia, a record on the pending appeal of the above named appellant, the Washington Securities Company, from the decree lately entered in favor of the appellee in the above entitled cause, which record shall consist of the following files, records and proceedings in said cause, to-wit:

1. The entire transcript of record as the same is on file in this court, being a printed transcript consisting of 279 pages, and known in this cause as Transcript of Record upon appeal from the United States Circuit Court for the Western District of Washington, Northern Division.

317 2. The opinion of the Circuit Court of Appeals.
3. The decree or judgment of the Circuit Court of Appeals.
4. Petition of appeal.
5. Decree allowing appeal.
6. Assignment of Errors.
7. Affidavit as to amount in controversy.
8. Order fixing amount of bond.
9. Bond on Appeal.
10. Order approving bond on appeal.
11. Citation.
12. Return of service of citation upon appeal.
13. Acceptance of service of citation upon appeal.

And all other matters relating to said appeal or to the perfection thereof, and likewise all endorsements and certificates upon each and all of said papers.

(Signed) H. R. CLISE &
C. K. POE.
Attorneys for Appellant.

(Endorsed:) Præcipe for Transcript on Appeal to Supreme Court U. S. Filed Sep. 28, 1912. F. D. Monckton, Clerk.

318 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Præcipe for Transcript on Appeal.

To the Clerk of the said Court.

SIR: Please issue (1) The entire transcript of record as the same is on file in this court, being a printed transcript consisting of 279 pages, and known in this cause as Transcript of record upon appeal, from the United States Circuit Court for the Western District of Washington, Northern Division; (2) The Opinion of the Circuit Court of Appeals; (3) The decree or judgment of the Circuit Court of Appeals; (4) Petition for appeal; (5) Decree allowing appeal; (6) Assignment of Errors; (7) Affidavit as to amount in controversy; (8) Petition for Order fixing amount of bond; (9) Order fixing amount of bond; (10) Bond on Appeal; (11) Order approving bond on appeal; (12) Citation; (13) Return of service of citation upon appeal; (14) Acceptance of service of citation upon appeal. And all other matters relating to said appeal or to the
319 perfection thereof, and likewise all endorsements and certificates upon each and all of said papers.

(Signed) H. R. CLISE &
C. K. POE,
Att'ys for Appellant.

(Endorsed:) Præcipe for Transcript on Appeal. Filed October 3, 1912. F. D. Monckton, Clerk.

320 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1988.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and to Transcript of Record upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-nine (39) pages, numbered from and including one (1) to and including thirty-nine (39), to be a full, true, and correct copy of the Assignment of Errors and of all proceedings had in the above-entitled case in the United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein, as the same remain on file and appear of record in my office, and that the same, together with the preceding certified copy of the Printed Transcript of Record in the above-entitled cause, constitute a true copy of the complete record prepared pursuant to the præcipes therefor, filed by counsel for the appellant, and constitute the Transcript of Record in the above-entitled case upon the appeal taken therein from the said Circuit Court of Appeals to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighth day of October, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

321 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

I, the undersigned, attorney for the United States of America, appellee, do hereby accept service in behalf of said United States of America, of the within Citation on this 24th day of September,

1912, and do hereby acknowledge receipt of a true copy of said Citation.

B. W. CAINES,
Attorney for the United States of America.

322 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

WASHINGTON SECURITIES COMPANY, a Corporation, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal, duly allowed by the United States Circuit Court of Appeals and filed in the clerk's office of said court on the 14 day of September, A. D. 1912; in a cause wherein Washington Securities Company, a corporation, is appellant, and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White Chief Justice of the Supreme Court of the United States, this 14th day of September, 1912.

WM. B. GILBERT,
United States Circuit Judge, Ninth Circuit.

323 [Endorsed:] Original. Docketed. No. 1988. In the United States Circuit Court of Appeals for the Ninth Circuit. Washington Securities Company, a Corporation, Appellant, vs. United States of America, Appellee. Citation. Filed Sep. 28, 1912. Frank D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk. H. R. Clise, C. K. Poe, Attorney- and Counselor- at Law, Seattle, Wash., Attorney- for Appellant, 405 New York Building, Seattle, Wash.

Endorsed on cover: File No. 23,399. U. S. Circuit Court Appeals, 9th Circuit. Term No. 824. Washington Securities Company, appellant, vs. The United States. Filed October 23d, 1912. File No. 23,399.

No. 367.

FILED
MAR 20 1914
JAMES D. MAHER
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1913.

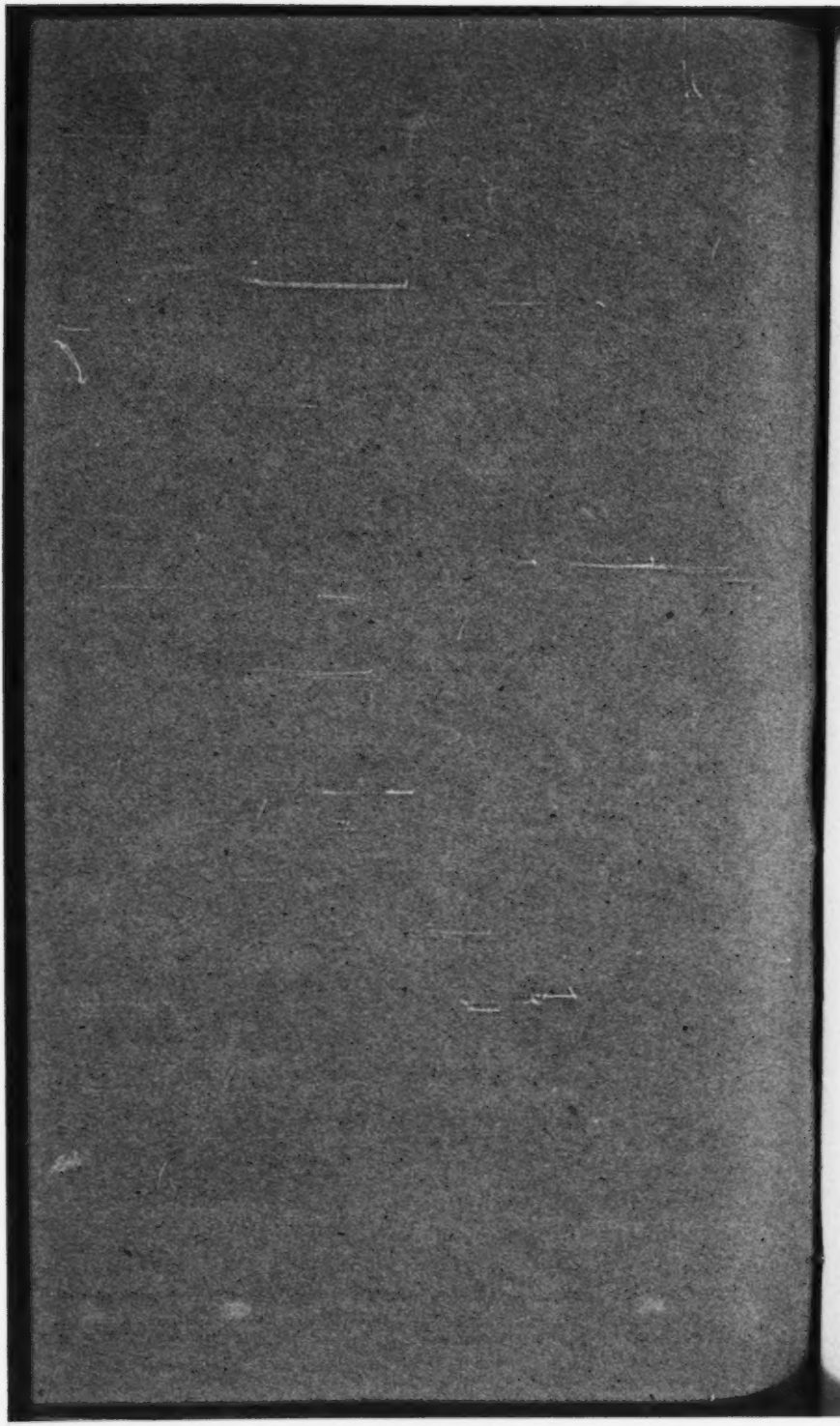
WASHINGTON SECURITIES COMPANY,
Appellant,
vs.
THE UNITED STATES,
Appellee.
No. 367.

Appeal From the United States Circuit Court of Appeals for the Ninth Circuit.

Brief for the Appellant

H. B. CLISE,
CHARLES KENNEDY POE, and
CHARLES POE,
Attorneys for Appellant.

THE IVY PRESS, THIRD AND CHERRY, SEATTLE



In the Supreme Court of the United States

OCTOBER TERM, 1913.

WASHINGTON SECURITIES COMPANY, *Appellant*, vs. THE UNITED STATES, *Appellee*.	No. 367.

Appeal From the United States Circuit Court of Appeals for the Ninth Circuit.

Brief for the Appellant

H. R. CLISE,
CHARLES KENNEDY POE, and
CHARLES POE,
Attorneys for Appellant.

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In the Supreme Court of the United States

OCTOBER TERM, 1913.

WASHINGTON SECURITIES COMPANY, *Appellant*, *vs.* THE UNITED STATES, *Appellee*.	No. 367.

Appeal From the United States Circuit Court of Appeals for the Ninth Circuit.

Brief for the Appellant

STATEMENT.

This is an appeal from a decree of the United States Circuit Court of Appeals for the Ninth Circuit, affirming a decree of the Circuit Court of the United States for the Western District of Washington, Northern Division, cancelling certain homestead patents.

The government brought this suit in equity to cancel certain homestead patents issued for four different tracts of land, jointly comprising all of

section thirty-four (34), township thirty-two (32) north of range seven (7) east of the Willamette Meridian.

The patents were issued as follows:

To Zachariah Turner, patent dated November 2, 1904, to east half of east half (E. ½ E. ½) of said section.

To Odin A. Olsen, patent dated May 6, 1903, to northwest quarter (N. W. ¼) of said section.

To Robert L. Barbee, patent dated December 12, 1904, to southwest quarter (S. W. ¼) of said section.

To Thos. B. Forsyth, patent dated August 3, 1904, to west half of northeast quarter (W. ½ N. E. ¼) and west half of southeast quarter (W. ½ S. E. ¼) of said section.

Odin A. Olsen conveyed an undivided one-half interest in his quarter section to Thos. G. Spraight on February 24, 1905, and they both thereafter, on February 24, 1906, conveyed the whole to C. J. Smith.

Thos. B. Forsyth conveyed his quarter to C. J. Smith on May 4, 1906, and Turner and Barbee conveyed theirs to him on October 10, 1906.

Smith in turn conveyed the various quarters to appellant, the Turner, Olsen and Barbee tracts on October 10, 1906, and the Forsyth on May 14, 1906.

The Government's theory is that the patents were procured by fraud consisting of the alleged fact that the patentees homesteaded the land as agricultural and timber land with knowledge that it contained valuable deposits of coal, and that they swore falsely when they made the non-mineral affidavit required by the rules and regulations of the General Land Office; that, as a consequense, the patents were void and subject to cancellation, even as against the appellant.

It is not charged that the officers of the Department participated in the alleged fraud, or that they connived with the homesteaders in issuing the patents. Nor is it claimed or proved that appellant, its officers or agents, had anything to do with the procurement of the patents, or that the patentees were its representatives in this respect. To the contrary, the only thing with which appellant is sought to be charged is the purchase of the land with knowledge of the circumstances when it bought from the several patentees.

The record shows that the homestead claims

were disputed by other claimants, and that the land office refused thirty-two hundred dollars ($3,200.00), which was tendered for one of the quarter sections as coal land.

As the defense of *bona fide* purchaser is perfect in an action of this sort, and as the decision of the Department is final upon a disputed question of fact, we shall divide our argument into two general propositions incorporating therein such collateral points as may arise and become pertinent, as follows:

FIRST: *The fraud, if any, of the patentees has not been brought home to the appellant with that degree of precision required by law, and the Government has failed to establish by clear and satisfactory evidence that the appellant was not a bona fide purchaser of the disputed property.*

SECOND: *The decision of the Land Office as to the character of this land was in the nature of a judicial determination of the matters in dispute and finally binding upon the Government.*

ASSIGNMENT OF ERRORS.

"That in the record and proceedings herein there is manifest error, and that the United States

Circuit Court of Appeals for the Ninth Circuit erred in this, to-wit:

I.

"In affirming and not reversing the decision and decree of the United States Circuit Court for the Western District of Washington, Northern Division.

II.

"In holding and deciding that the decision of the Land Department in rejecting the claims of the mineral claimants was not a final adjudication of that question.

III.

"In holding and deciding that the appellant was chargeable with any knowledge obtained or acquired by Mr. C. J. Smith prior to his employment by or association with this appellant.

IV.

"In holding and deciding that C. J. Smith had knowledge of the mineral character of the land at or prior to the date of the homestead entries, or at the time of the issuance of patents therefor.

V.

"In holding and deciding that section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at or prior to the date of the homestead entries of Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

VI.

"In holding and deciding that section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at the dates of the issuance of patents to said Zachariah Turner, Odin A. Olsen, Robert L. Barbee and Thomas B. Forsyth.

VII.

"In holding and deciding that section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the date of purchase of said section by the defendant above named.

VIII.

"In holding and deciding that the east half (E. ½) of the east half (E. ½) of section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Millamette Meridian, was known coal land at and prior to the date of the homestead entry thereon by Zachariah Turner.

IX.

"In holding and deciding that the northwest quarter (N. W. ¼) of section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Odin A. Olsen.

X.

"In holding and deciding that the southwest quarter (S. W. ¼) of section thirty-four (34),

township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Robert L. Barbee.

XI.

"In holding and deciding that the west half (W. ½) of the northeast quarter (N. E. ¼) and the west half (W. ½) of the southeast quarter (S. E. ¼) of section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the date of the homestead entry thereon of Thomas B. Forsyth.

XII.

"In holding and deciding that the east half (E. ½) of the east half (E. ½) of section thirty-four (34), Township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the second day of November, 1904.

XIII.

"In holding and deciding that the northwest quarter (N. W. ¼) of section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the first day of November, 1904.

XIV.

"In holding and deciding that the southwest quarter (S. W. ¼) of section thirty-four (34),

township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the twelfth day of December, 1904.

XV.

"In holding and deciding that the west half (W. ½) of the northeast quarter (N. E. ¼) and the west half (W. ½) of the southeast quarter (S. E. ¼) of section thirty-four (34), Township twenty-two (22) north of range seven (7) east of the Willamette Meridian, was known coal land at and prior to the third day of August, 1907.

XVI.

"In holding and deciding that the several patentees entered into possession of said section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, and excluded therefrom the 'coal syndicate' by force and threats of violence.

XVII.

"In holding and deciding that there was no formal contest between the 'syndicate' and the patentees, and that the Land Office, without permitting the introduction of evidence arbitrarily rejected the coal claim and that no appeal was taken.

XVIII.

"In holding and finding that the defendant, at the time of purchasing the land, had actual knowledge that when the commutation entries were al-

lowed the land was known to be coal land and should have been sold as coal land only, to purchasers authorized by law to make entry of coal land in limited quantities as prescribed by law, and knew that the officers of the land office had, contrary to their duty, allowed the entries and issued patents as if the land were rightfully classed as non-mineral land, and with that knowledge purchased the land from patentees, paying therefor what appeared to be a fair price for undeveloped coal land.

XIX.

"In holding and deciding that the defendant was not a bona fide purchaser of section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, but acquired it with knowledge of the facts tainting the title.

XX.

"In holding and decreeing that the patents to section thirty-four (34), township twenty-two (22) north of range seven (7) east of the Willamette Meridian, be cancelled, annulled and set aside, and that the defendant and all persons claiming under it be foreclosed of all interest, right or title to said section, and that the complainant is the legal and equitable owner of said lands and confirming and quieting its title thereto.

XXI.

"In not entering a decree dismissing complainant's complaint, and affirming the United States Circuit Court for the Western District of Washington, Northern Division.

XXII.

"In taxing the costs of this action against the defendant and in not taxing the costs thereof against the complainant."

ARGUMENT.

I.

We concede, as a preface to our argument, that this court has announced with tiresome repetition that it will not attempt to weigh conflicting testimony when the two lower courts have agreed upon the facts.

On the other hand it is equally well settled that where the findings of the lower courts are based wholly upon flimsy or insufficient testimony, or are unsupported by any substantial testimony whatever, they will be set aside.

> "* * * These propositions we have often affirmed. At the same time there has always been recognized the right and the duty of this court to examine the record, and if it finds that the conclusions are wholly unwarranted by the testimony it will set the verdict or report aside and direct a re-examination. * * *"
>
> *Beyer vs. Le Fevre*, 186 U. S. 114-119 (46 L. Ed. 1080-1084).

This rule applies to the Government as well as

to an individual; and its application is doubly essential in a case of this character, where the very gravamen of the suit is fraud and its object the cancellation of a patent.

> "The government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual. 'It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.' *Maxwell Land Grant Case, supra,* p. 381; *United States vs. Iron Silver Mining Co.,* 128 U. S. 673, 677; *United States vs. Des Moines, etc. Company, supra,* p. 541."
>
> *United States vs. Stinson,* 197 U. S. 200.

It follows that we start with the proposition that the conclusions of the lower court on the question of knowledge possessed by Mr. Smith and imputable to the appellant, are here wholly unsupported by competent evidence, or, at best, are based entirely upon a most flimsy showing, conjecture, inference and speculation.

It will be remembered that this action is grounded in fraud—the fraud of the patentees, and not the fraud of the appellant, its agents or servants; and, in order to prevail, the Government is

obliged to show (a) that the appellant participated therein, or (b) that it bought the property with knowledge thereof, and consequently was not an innocent, *bona fide* purchaser for value.

In either event, as fraud is never presumed, it is incumbent upon the Government to establish it by clear, unequivocal and convincing testimony.

United States vs. Mills et al., 169 Fed. 686;

United States vs. Detroit Tbr. & Lbr. Co., 124 Fed. 393, 200 U. S. 321, 50 L. Ed. 499;

United States vs. Clark, 200 U. S. 601.

With this rule in mind, we shall discuss the evidence as briefly as the circumstances permit. Mr. C. J. Smith is the medium through whom the appellant is sought to be charged—the anchor to which the Government's case is tied—and the following is, we believe, all the testimony which shows, or tends to show, that Mr. Smith had any knowledge of the character of the land until it was brought to his attention after the patents had been issued, or which can in any way be taken as imputing his individual knowledge to the appellant as a corporation.

In 1882, F. H. Whitworth, E. M. Smithers, Al. Evans, three other men and an Indian, were prospecting upon the land.

Shortly thereafter, a syndicate was formed of E. M. Smithers, J. M. Coleman, James Williams and Mr. Whitworth. Some time later Mr. Howard, a representative of the Oregon Improvement Company, became interested in the prospect (R. p. 78). Subsequently Mr. Howard, ostensibly as an individual, but in reality as an agent of the Oregon Improvement Company, acquired a one-third interest in the prospect. This syndicate, whose membership changed from time to time during a period of from ten to fifteen years, expended in prospecting the section something over eight thousand dollars (R. pp. 78-79). All this occurred long prior to the time when Mr. Smith became associated with the Oregon Improvement Company, which did not occur until probably 1890. Thereafter he became associated with the Oregon Improvement Company, either as general manager or as receiver, until 1898 (R. p. 98), but he never became a member of the syndicate in any manner whatever.

Under date of November 8, 1890, Mr. Howard wrote Mr. Smith regarding the land, and stated among other things that he had received conflicting reports, "some favorable, some otherwise." (Complainant's Exhibit "F," R. p. 180.) This was followed by a letter, dated December 8, 1890, in which

he says: "here is an expense of the company's which was incurred prior to the appointment of the receiver" (Complainant's Exhibit "G"; R. p. 241). This letter evidently prompted complainant's Exhibit "H" (R. p. 182), which is as follows:

"Seattle, Washington, December 9, 1890.

"H. W. McNeill, Esq.,
Seattle, Wash.

"Dear Sir:

"Please let me know what you think of Section 34 marked on the map in the name of J. L. Howard. Is there anything in it, or have you ever made any examination of it?

"Yours truly,
"C. J. Smith,
"General Manager."

The foregoing, in the light of the letter last quoted, instead of showing that Mr. Smith knew the character of this land, to the contrary conclusively demonstrates that he did not.

The letter last quoted is followed seven years later by a letter from witness Whitworth to Mr. Howard, wherein he offers to sell his own and a Mr. McGuire's interest, at a low price, and enclosed a bill for expenses in connection with the land for two years preceding. (Complainant's Exhibit "I"; R. p. 183.) This bill charges Mr. Howard with $51.50, being his proportion of the total

expense. The next instrument is an Oregon Improvement Company voucher in favor of Mr. Howard for the amount of this bill, approved by Mr. Smith, and stamped—"Paid January 30, 1897" (Complainant's Exhibit "J"; R. p. 184).

The foregoing is, we believe, a full account of all the testimony tending to show that Mr. Smith had any knowledge of the character of this land, until in the Olsen case, three and in the others two years after the patents were issued.

It will be remembered that the Olsen patent was issued in 1903, and the others in 1904, and that the Olsen tract was purchased by Mr. Smith about three years after patent, and the others about two.

The appellant is a corporation organized under the laws of the State of Washington; and, although it was about to be formed, was not organized in 1906, when Mr. Smith bought the disputed property from the several patentees (R. p. 99). This means that the Olsen patent was issued at least three, and the others two, years before the appellant came into existence. We concede, however, that in purchasing the property, Mr. Smith did so with the intention of transferring it to appellant when organized, and that he possessed such authority in that respect as an unborn corporation could confer.

Assuming without conceding at this point that, at the time of the purchase of the property, Mr. Smith knew of the character of the land, the question which at once presents itself is—what effect would that knowledge have upon the appellant as a *bona fide* purchaser? In other words, can this appellant, which was not organized until 1906, be held accountable for a fraud (if there was any fraud) perpetrated upon the Government by the patentees in making false non-mineral affidavits, as a prerequisite to the issuance of their patents? From the very nature of things, the fraud, if any, must have been committed prior and not subsequent to the date of the patents, and we are confronted with the proposition as to whether or not any knowledge which Mr. Smith may have had of the fraud could be imputed to the company. As said before, there is nothing in the record which in any way tends to show, nor is there any claim made, that Mr. Smith aided any of the homesteaders in obtaining their patents, nor is it shown that he knew how they were acquired. The utmost which can be drawn from the testimony quoted, and from the entire record, is that Mr. Smith knew, or at some time in the remote past had knowledge of the fact, that some persons had prospected upon this section for coal.

We take the general rule to be that knowledge acquired by an agent, outside the scope of his employment, is not imputable to the principal; and while this rule has been qualified in several instances, we feel that in this case it should be applied in the strictest sense, as there is not one word in the record which shows that the appellant did anything but pay good money for the property, or that it had any actual knowledge through Mr. Smith, or anyone else, that the homesteaders had committed a fraud upon the Government. To the contrary, it had the right to rely upon the validity of the patents and to proceed in the belief that the entrymen and the Department officials had done their duty and performed their obligations as all men in law are presumed to have done until the contrary is shown.

Judge Sharswood, in discussing the doctrine of imputed knowledge, said in a celebrated case that:

> "The true reason of the limitation is a technical one, that it is only during agency that the agent represents and stands in the shoes of his principal. Notice to him is then notice to his principal. Notice to him twenty-four hours before the relation commenced is no more notice than twenty-four hours after it had ceased would be."

Houseman vs. Gerard, etc., 81 Pa. St. 256; *Story on Agency*, Sec. 140.

"A corporation can have no agents until it is brought into existence."

Davis, etc., Co. vs. Davis, etc., Co., 20 Fed. 699.

"Any knowledge or notice which an agent may have received while acting for another party or association, or which any individual member of the corporation may have obtained prior to the constitution of the corporate body, most certainly would not, as a matter of law, by implication, be carried over and imputed to the corporation, simply because one or more of the members of a previously existing concern may have become officers or stockholders of the corporation, nor because such agent afterwards became an agent for the corporation."

Brennan et al. vs. Emery-Bird-Thayer Dry Goods Co., 99 Fed. 971, 972.

Passing this point and turning again to the evidence, we find that Mr. Smith had heard nothing of this land from the time he left the Oregon Improvement Company in 1898 until he was approached by Mr. Brooks or Braggs in 1906, who endeavored to sell him the property. What occurred then is well described by Mr. Smith, and we quote his testimony as follows:

"A man by the name of Braggs came to me and told me he had some coal land, wanted

to know if I was interested in coal, and I asked him where the land was. He told me it was in section 34, township 22, seven, I think it was, and I told him that I was not, that I didn't believe that I cared to be interested, and he asked me if there was anybody that he could obtain as a purchaser, that he had an option on the land. I referred him to C. R. Collins, who at that time was hunting for some coal land with the expectation of getting coal that would be adaptable for gas purposes. He had some negotiations with Mr. Collins and Mr. Collins came to me and said that he would take it if I would take an interest, which I declined to do; and Mr. Collins took it up with some people in the east, and, not obtaining the necessary funds, told Mr. Braggs that he was unable to carry out his plans; and Braggs came back to me again, and in the meantime the Washington Securities Company was about to be formed and their stock was then being subscribed, and I referred Mr. Braggs to the Securities Company. He had a talk with Mr. Clise, who expected to be the president of the company and who was promoting it—forming it, and Mr. Clise discussed the question with me and Mr. Braggs, and I told him that—I gave him the name of an engineer—mining engineer, that would exploit the land, that is, would make examination, and that I knew nothing personally about the land myself, but would rely upon a report that this man would make; and, at my suggestion, the man was employed to go there and look the land over. After he had looked it over the matter of purchase was taken up between myself and Mr. Braggs and an option was taken for a sufficient length of time to enable us to verify the report of the

> engineer, and, upon the verification of those reports and the abstract of title, the land was purchased." (R. p. 100.)

This statement is practically reiterated on page 117 of the record.

The foregoing clearly demonstrates that the report of the engineer sent to examine the property was the thing which induced the company to buy, and further shows that it was relying upon that report and not upon anything which Mr. Smith may or may not have known about the land.

After receiving a favorable report from its engineer, the company very naturally required an abstract of title, which was referred to its attorney, Mr. H. R. Clise, for examination, who, by the way, was not the Mr. Clise to whom Mr. Smith referred in the testimony just quoted.

There is not a scintilla of evidence to show that Mr. Smith knew the contents of this abstract, or whether the patents issued to the entrymen were to agricultural or mineral land. The record also fails utterly to show that the examining attorney knew the character of the land, and, if he did not, he was unquestionably entitled to assume that the patents were properly and lawfully issued.

U. S. vs. Calif. etc. Land Co., 148 U. S. 31-44, 45 (37 L. Ed. 354).

From this it will be seen that, so far as appellant is concerned, all the information it received came from the engineer's report that the land was a good coal prospect, and from its attorney, who reported that the title was good in the several patentees.

In this connection, Mr. Smith said that he did not know the land had been taken up as a homestead (R. p. 117), and he further said that he had no recollection of the character of the land, and had forgotten all about it until it was brought to his attention by Mr. Braggs or Mr. Brooks (R. pp. 116, 117, 118, 119 and 120).

In *Harrington vs. United States*, the question of "*how far a purchaser is affected by notice of prior liens, trusts, or frauds, by the knowledge of his agent who effects the purchase*" was directly before this court, and the doctrine of imputed knowledge discussed at length. The court, per Mr. Justice Bradley, carefully reviewed the authorities and concluded:

> (1) That the presumption of knowledge depends upon the lapse of time between the purchase and the time when the knowledge was acquired by the agent.

(2) That the principal was not bound by such knowledge unless present to the agent's mind at the time of the purchase.

(3) That there must be clear and satisfactory proof that it was so present and that if the agent acquired the knowledge at the time he effects the purchase no question can be raised as to his having it at the time.

As stated by the court:

"If he acquire the knowledge when he effects the purchase, no question can arise as to his having it at that time; if he acquired it previous to the purchase, the presumption that he still retains it, and has it present to his mind, will depend on the lapse of time and other circumstances. Knowledge communicated to the principal himself he is bound to recollect, *but he is not bound by knowledge communicated to his agent, unless it is present to the agent's mind at the time of effecting the purchase. Clear and satisfactory proof that it was so present seems to be the only restriction required by the English rule as now understood.*"

Harrington vs. U. S., 11 Wall. 356 (20 L. Ed. 167).

Can anyone fairly say from reading the foregoing testimony that the government has established by "*clear and satisfactory proof*" that the knowledge which it is alleged, but not proved, that Mr. Smith acquired when he signed a voucher for $51.50 in 1897 was present to his mind when he introduced Mr. Brooks to the appellant's president? The only

direct proof upon this point is Mr. Smith's own testimony, and he flatly denies any recollection of the circumstances which occurred while he was receiver of the Oregon Improvement Company; and there is certainly nothing in the record which clearly or satisfactorily shows that he perjured himself in this regard. In the absence of direct proof, we are forced into the realm of conjecture and speculation, which certainly does not meet the requirements of the *Harrington case*, wherein it was further said:

> "* * * the presumption that he still retains it, and has it present to his mind, will depend on the *lapse of time* and other circumstances,"

and that *clear and satisfactory proof* that it was so present is necessary.

It certainly cannot be presumed as a matter of law that Mr. Smith recalled the meager circumstances connected with this land which the record shows to have occurred nearly sixteen years ago, and it is only reasonable to assume that he forgot them, or at least that they were not so clearly present to his mind as to charge the appellant with them by invoking the doctrine of imputed knowledge. This seems especially true in view of his direct denial.

United States vs. Clark, 200 U. S. 601.

To review the testimony:

We have two letters written to Mr. Smith nearly sixteen years ago, telling him that the company for which he was then receiver had a one-third interest in a prospecting venture, upon the land in suit, and asking him to find out something about it. Next we have a letter written by Mr. Smith in 1890 to H. W. McNeill, wherein he asks if there is anything in the venture, and the record is singularly silent as to the result of this inquiry. This is followed by an offer of the chief witness, Mr. F. W. Whitworth, to sell his interest in the land at a low figure, and then comes a voucher approved by Mr. Smith as receiver of the Oregon Improvement Company for $51.50 in favor of Mr. Howard for charges connected with the prospecting adventure. None of these things show that he remembered the circumstances after the lapse of nearly sixteen years, and it is only fair to assume that he told the truth when he said that he had no recollection of them.

The letter to Mr. McNeill is proof positive that he knew nothing about the land at the time it was written, and Mr. Whitworth's offer to sell tends strongly to establish the fact that he thought but little of the property as a mining proposition. Add

to this the fact that none of the prospectors, during all of the years they worked upon the land, thought it sufficiently valuable to justify them in developing their prospect, and the further fact that the Land Office permitted the property to be homesteaded, and the conclusion seems inevitable that that office was justified in its conclusion that the land was more valuable for agriculture than as mining property. In any event, as said before, there is nothing in the record which shows that Mr. Smith personally knew the method by which the entrymen acquired the land, or that Mr. H. R. Clise, the company's attorney, knew its character, or that they had made a false entry or defrauded the government in any other particular, or that he was not justified in relying upon the integrity of the patent. It will be remembered that no claim is made that Mr. Smith, the company, its agents or servants, connived with or assisted the patentees in homesteading the land, or that they even knew that patents had issued until Mr. Braggs or Brooks called upon Mr. Smith. It is not shown or even suggested that Mr. Smith knew the source or character of their title, or whether they entered upon the land under the mining or homestead laws. On the contrary, it is proved and unquestioned that Mr. H. R. Clise

examined the title, found it apparently perfect, and so reported to appellant and to Mr. Smith. It is not shown that Mr. Smith recalled the circumstances which were brought to his knowledge some sixteen years before while acting as receiver of the Oregon Improvement Company, or that, if he had this knowledge, he ever communicated it to the appellant company. It is not shown that appellant was not a *bona fide* purchaser for value, and as such entitled to rely upon the validity of the patents. It is not shown that the Department officials were not warranted in making the finding which they did, relative to the character of this land, and that the Government did not have full knowledge of what they did.

All of the cases are at one on the proposition that the cancellation of an executed contract is an exercise of the most extraordinary power of a court of equity, and one which should never be used for an alleged fraud unless it is established by clear, unequivocal and convincing testimony. It cannot be done upon a bare preponderance of evidence; and fraud is never presumed, but the burden of producing proof, and of establishing it, is upon the government, from which it is not relieved, although

the proposition to be established is of a negative nature.

> "This rule applies with increased force where the Government seeks to cancel a patent which has been issued by it. * * * The facts established, as a whole, should be inconsistent and irreconcilable with the integrity of the patent or the integrity and legality of the actions of the defendants charged with the fraudulent entries and should be so satisfactory as to make it clear to the court that the land was procured by fraud."
>
> *United States vs. Detroit Timber & Lbr. Co.*, 124 Fed. 393; affirmed in 200 U. S. 321 (50 L. Ed. 499).

Both of these opinions were most carefully considered and support our contentions fully.

The decisions were reviewed and quoted in *United States vs. Mills*, wherein it is said:

> "Cancelling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear. *The Atlantic Delaine Co. vs. James, adminx., etc.*, 94 U. S. 207, 24 L. Ed. 112.
>
> "A suit by the Government to set aside or annul a patent issued by it should be sustained only when the allegations on which it is attempted are clearly stated and fully sustained by proof. *U. S. vs. Stinson et al.*, 197 U. S. 203, 25 Sup. Ct. 426, 49 L. Ed. 724; *U. S. vs. Budd*,

144 U. S. 154, 12 Sup. Ct. 575, 36 L. Ed. 384.

"In the case of the *United States vs. De-Moines & Co.*, 142 U. S. 541, 12 Sup. Ct. 316, 35 L. Ed. 1099, the court said: 'Muniments of title issued by the Government are not to be lightly destroyed.'

"In a suit by the United States to cancel a patent of public land, the burden of producing proof and establishing the fraud is on the government, from which it is not relieved, although the proposition which it is bound to establish may be of a negative nature. *Colorado Coal & Iron Co. vs. U. S.*, 123 U. S. 307, 8 Sup. Ct. 131, 31 L. Ed. 182.

"The testimony on which this is done must be clear, unequivocal and convincing. It cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. *Maxwell Land Grant Cases*, 121 U. S. 325, 7 Sup. Ct. 1015, 30 L. Ed. 949; *United States vs. San Jacinto Tin Co.*, 125 U. S. 273, 8 Sup. Ct. 850, 31 L. Ed. 747.

"Fraud is never presumed, and it devolves upon him who alleges fraud to show the same by satisfactory proof." *Walker vs. Collins*, 59 Fed. 70, 8 C. C. A. 1.

"In the case of *United States vs. Detroit Timber & Lumber Co.* (C. C.), 124 Fed. 393, the court said:

"This rule applies witht increased force where the Government seeks to cancel a patent which has been issued by it. * * * The facts established, as a whole, should be inconsistent and irreconcilable with the integrity of the patent or the integrity and legality of the actions of the defendants charged with the

fraudulent entries, and should be so satisfactory as to make it clear to the court that the land was procured by fraud."

United States vs. Mills, et al., 169 Fed. 686.

"We take the general doctrine to be that, when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done *must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt.* If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, *how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidence of title emanating from the government of the United States under its official seal.*"

Maxwell Land Grant Case, 121 U. S. 325, 381 (30 L. Ed. 949).

United States vs. Iron Silver Mining Co., 128 U. S. 673, 674 (32 L. Ed. 571).

Colorado Coal & Iron Co. vs. United States, 123 U. S. 307 (31 L. Ed. 182).

United States vs. Stinson, 197 U. S. 200, 204 (49 L. Ed. 724).

United States vs. Clark, 200 U. S. 601 (50 L. Ed. 613).

We are curious to know where the Government has sustained the burden cast upon it under these authorities; or where it has succeeded in show-

ing that the land was known to *be* mineral land. There is unquestionably testimony, and a good deal of it of a hearsay character, which tends to show that the property was known as mineral land, but this does not satisfy the statutes of the United States or the decisions of this court construing them, as the land must be known to be minerally valuable as required by law at the date of the patent. And none of them testified that there were any known mines upon the land or anything more than a mere prospect, which might or might not prove valuable.

> "There is a marked unanimity of opinion among the authorities that, to overcome the presumption that a patent to public lands was issued upon sufficient evidence, clear and convincing proof must be produced, and, in the consideration of the mineral character of the land, not only must it satisfactorily appear that it was known mineral land other than coal or iron at and prior to the issuance of the patent, but it must be more valuable for mineral than for agricultural or other purposes. *Deffebach vs. Hawke*, 115 U. S. 404, 6 Sup. Ct. 95; *Iron Silver Min. Co. vs. Mike & Starr Gold & Silver Min. Co.*, 143 U. S. 394, 430, 12 Sup. Ct. 543; *U. S. vs. King*, 27 C. C. A. 509, 83 Fed. 188; *Alford vs. Barnum*, 45 Cal. 482; *U. S. vs. Iron Silver Min. Co.*, 128 U. S. 673, 9 Sup. Ct. 195, *U. S. vs. Marshall Silver Min. Co.*, 129 U. S. 588, 9 Sup. Ct. 343. 'If upon the premises at that time (when title was acquired) there were not actual "known mines" capable of being profitably worked for their product, so as to

make the land more valuable for mining than for agriculture, a title to them, acquired under the pre-emption act, cannot be successfully assailed.'"

Colorado Coal & Iron Co. vs. U. S., 123 U. S. 328 8 Sup. Ct. 131.

United States vs. Central Pac. R. Co., 93 Fed. Rep. 871-873;

Deffeback vs. Hawke, 115 U. S. 392, 404, 405 (29 L. Ed. 423);

Davis, Admr., vs. Weibold, 139 U. S. 507, 521, 524 (35 L. Ed. 238);

Downer vs. Richards, 151 U. S. 658, 663 (38 L. Ed. 315);

Colo. Coal & Iron Co. vs. U. S., 123 U. S. 307, 327 (31 L. Ed. 182).

There must be knowledge and not mere belief of the mineral character of the land.

Iron Silver Mining Co. vs. Reynolds, 124 U. S. 374, 383-384 (318 L. Ed. 466).

The rule is less liberal in favor of the mineral character of land where the contest is between an agricultural claimant and a mineral claimant than where it is between two mineral claimants.

Christman vs. Miller, 197 U. S. 313, 323 (49 L. Ed. 770).

The testimony of all of the Government's witnesses was of a hearsay nature, and most of them

admitted that a portion of the land was valuable for agricultural purposes.

As further bearing upon the character of this land, we particularly call the court's attention to the testimony of Messrs. Brockway, Beal, C. M. and H. Harrington, appearing at pages 109 to 114 of the record, all to the effect that section 34 is exceptionally good agricultural land, and is well timbered. Their testimony is further illustrated and supported by appellant's Exhibits 1, 2, 3, 4, 5, 6, 7 and 8 (R. pp. 245 to 259 inclusive).

We feel that a perusal of this testimony will convince your Honors that there is nothing which would require Mr. Smith or the company's attorney to question the integrity of the patents. Of course, as put by Mr. Justice Holmes in *United States vs. Clark, supra*, 200 U. S. 601, "when suspicion is suggested it is easily entertained." But we do not believe there is any rule of law which required Mr. Smith or the appellant to hunt for "*grounds of doubt.*"

II.

The Decision of the Land Office as to the Character of This Land Is Final.

This suit, while perhaps not barred by any

statute of limitation, at least shows that the Government slept upon its rights for several years until the perpetrators of the alleged wrongs had cleared their skirts and induced the appellant to part with its money for the property. By failing to exercise ordinary diligence, it indirectly induced the appellant to assume the integrity of the patents, the good faith of the department agents and that the Government was satisfied with the bargain it made when it issued, and for several years failed to attack so solemn a muniment of title as its patent. Instead of attempting to impeach the patents immediately, the Government stood idly by, and by its unexplained delay confirmed their validity, for we have all been taught since childhood to believe that silence means consent.

Without tendering the purchase price or attempting to explain its *laches*, it now seeks through a court of equity, with the aid of a disgruntled tattler whose claim was rejected by the Department, to impute fraud where none exists, and to rescind therefore contracts which were made and recognized by it for several years. Without this unnecessary and unexplained inaction, we were entitled to assume that the patents were lawfully issued and procured. "*Omnia presumuntur rite et solemniter esse*

acta, donec probetur in contrarium." With it the presumption became conclusive, especially when applied to the officers of the land department as:

> "The law constantly presumes that public officers charged with the performance of official duty have not neglected the same."
> *Hays vs. Hill*, 23 Wash. 735-740;
> *United States vs. Clark*, 200 U. S. 601.

Strong as this defense should be in the eyes of a court of equity, we are not compelled to rely upon it entirely, as the departmental adjudication is not only conclusively presumptive of good faith, but, as a *quasi* judicial decision, is finally binding upon the courts. Mr. Sidney Williams, a lawyer, and one of the Government's star witnesses, testified as follows:

> A. When I made the filing and made the tender of the money, I filed alone at that time.
>
> Q. What year was that?
>
> A. I don't remember the year. It was about—
>
> Q. (Interrupting:) '96 or '7?
>
> A. I think it was, about; I don't know; the records show the filing. I don't remember.
>
> Q. It was shortly after the land was surveyed, wasn't it?
>
> A. I don't remember just exactly when it was, but the record shows. I made my filing and I made my tender of the money to the officer here.

Q. Any way you filed on it before—what was the condition, at what stage, were these homesteaders in when you filed?

A. They had just filed.

Q. They had just filed?

A. They had filed on it also, but hadn't made their final proof.

Q. Did you keep your filing good?

A. Yes, sir; I made a tender of the $3,200 to the Land Office.

Q. Then you contested their filing; did you?

A. No; it didn't go any further. They refused to accept my money—the Land Office here; it was more valuable for other purposes, and gave me back my money.

Q. And what, if any, showing did you make to substantiate your filing?

A. I made the same talk I have made here about the coal being there.

Q. In what way did you make that showing?

A. I had witnesses.

Q. That was before the office here?

A. Yes, sir.

Q. And, as the result of that showing, they refused to accept your tender?

A. Returned—

Q. (Interrupting.) And turned down your filing?

A. Yes, sir. (R. pp. 52-53.)

This is the same testimony quoted by the Circuit Court of Appeals in its opinion at page 202, and which they denominate as "one of the peculiar features to which reference has been made". Its peculiarity, to our minds, consists of the fact that the Government should even attempt to question the validity of the patents in the face of the decision of the Land Office after the dubious character of the land had been so fully presented. The Circuit Court of Appeals seems to have dismissed the point upon the theory that there was no formal contest. In reaching this conclusion, it evidently overlooked the fact that Mr. Williams stated that entryman Forsyth contested his coal entry (R. p. 59). We especially commend all of Mr. Williams' testimony to your Honor's consideration (R. pp. 49 to 59), and believe that it will show that the Department was fully apprised of the character of this land and familiar with the situation when it made the ruling which it did.

We do not understand that it is the practice of this court, in the exercise of its great appellate jurisdiction, to go out of its way to decide facts properly for the consideration of another branch of the Government, or to vacate patents upon such microscopic equities as are presented here. (*Ross*

vs. Day, U. S. Adv. Ops. 1913, p. 233; decided Jan. 5, 1914.)

If so, a patent is a mighty slender reed upon which to base a title; and this court has repeatedly held, in sustaining rulings of the Interstate Commerce Commission, that, while it might have reached a different conclusion upon the same evidence, it will not disturb the findings so long as there is any substantial testimony to sustain them. In the first place, as we understand it, the Department is not bound by any strict rules of evidence; it may use its discretion and send its engineers and surveyors upon the disputed property, or otherwise determine the matters in dispute by any means at hand. The procedure before a court and such a tribunal are essentially and necessarily different.

Judge Hanford who tried the case in the Circuit Court, said:

> "The evidence contains no explanation of the conduct of the land office officials in allowing the homestead entries in preference to the coal claims, and accepting $400.00 for a quarter section rather than $3,200.00. No complete transcript of the land office records affecting the land has been offered in evidence and it must be *inferred from lack of evidence to the contrary, that there was no formal contest between the syndicate and the patentees, that without permitting the introduction of evidence*

the coal claim was arbitrarily rejected and no appeal was taken."

Judge Hanford's opinion (R. p. 185).

The law, for centuries, has been more charitable, and the presumption has ever been in favor of fair dealing and against an arbitrary, capricious or unwarranted act. It is singular that if the action was, as Judge Hanford infers, arbitrary, that the contestant, an attorney at law and familiar with his rights, did not exercise his remedy and adjust the wrong by appeal. For all the record shows, this could have been done; but Judge Hanford, in the fullest enjoyment of his right to draw unwarranted inferences, has assumed the contrary.

It is not only possible but probable, and the presumption should be indulged, that when put upon inquiry, the Department authorities made an independent investigation and satisfied themselves as to the merits or demerits of the respective claims. Otherwise why did not the Government, having undertaken to prove fraud, do so by these officials whose word would have been the highest proof obtainable? The answer is manifest, and the chances ten to one that they would have testified that they had done their duty and acted upon proper information and mature deliberation. In any event, the

burden is not upon us to prove them good until they are proved bad by something more damning than an erroneous presumption.

This court has repeatedly held that a departmental decision is binding upon the courts as to any disputed fact presented. The decisions relating to the finality of such rulings are divided into two classes, one where the facts are disputed, or, what the court is pleased to term—"an adversary proceeding", and the other where the proceedings are *ex parte*.

The one class, such as *United States vs. Minor*, 114 U. S. 233 (29 L. Ed. 110), hold that the Department's decision does not estop the Government from cancelling patents which have issued upon fraudulent *ex parte* testimony in cases where there are no conflicting claims. The other holding that, where a departmental finding is made upon any disputed fact, it is not only binding upon the parties to the controversy, but upon the Government and all other persons as well.

The distinction, although clear and well recognized, has been sometimes ignored by other courts, and we therefore anticipate respondent's argument upon it.

39

The rule, as we take it, is this:

Where the proceedings are wholly *ex parte*, and the Government compelled to rely on the evidence of the party charged with fraud, the Department's finding of a particular fact or circumstance is not binding or conclusive. On the other hand, where there is a disputed question presented to or considered by the Departments, "*their decisions are final to the same extent as those of other judicial or quasi judicial tribunals*".

Vance vs. Burbank, 11 Otto 514 (25 L. Ed. 929);

Greenameyer vs. Coate, 212 U. S. 434 (53 L. Ed. 587);

Quinby vs. Conlan, 14 Otto 420 (26 L. Ed. 800);

DeCambra vs. Rogers, 189 U. S. 119 (47 L. Ed. 734).

As it can hardly be denied that the character of this land was disputed before the Department and was the one fact considered in determining the rights of the homesteaders its decision is not open to denial.

In view of the fact that the proceedings before the Department were adversary, and no charge having been made that the officials committed any

fraud, we respectfully submit that their adjudication is final.

III.

Most of the points for which we contend were presented in *McCaskill vs. United States*, 216 U. S. 506, and for that reason we risk prolixity and discuss it briefly.

The material points there considered were these: (1) that this court will rarely balance conflicting testimony where the two lower courts have agreed upon the facts; (2) that the doctrine of *United States vs. Throckmorton*, 98 U. S. 61, and kindred cases, are inapplicable where the proceedings before the Department were wholly *ex parte;* (3) that, while a corporation is a distinct entity, and, as such, entirely separate from its officers, cases arise in which their knowledge of certain facts becomes chargeable to it.

We shall discuss these points in their order:

I.

Upon the first point, the court held itself concluded by the finding of the lower court. It did so, however, not only after having found that there was conflicting testimony, but the opinion as a whole

seems to intimate that the same conclusion would have been reached upon the facts if submitted as a case of first impression.

Here there was no conflict, nor was there a particle of direct proof that Smith or the Company had knowledge that the homesteaders committed fraud. The only evidence in this regard was the Government's exhibits "G", "H", "I" and "J" and Mr. Smith's own testimony. These exhibits might raise a doubt in a suspicious mind, but fall far short of being satisfactory proof, and even this suspicion is removed by Mr. Smith's testimony.

The two exhibits dated in April, 1890, instead of showing knowledge, are proof to the contrary. The two dated in 1897 show no personal knowledge. On the other hand, Mr. Smith's testimony is clear, cogent and convincing, and is fairly contained in the following:

> "He informed me it was section 34, located near Kanascott; and he asked whether I knew about it, and I told him no; and he went on to describe then its location with reference to other mines there beyond Franklin, and within the range of Kangley and Drum and Alta and some other pieces of property that had been more or less exploited in that part of the country, and I told him then that I had an indistinct remembrance that that had been brought to my

attention some years before, but that I had never seen any report or examination of it, I was not aware of the value of it, and I did not know whether it was coal or not, and I did not care to go any further with it, that was, as to myself personally. When the company was formed, I referred it to them, and they desired first an examination. Upon that examination, they made their purchase."

(R. p. 205.)

The fact that the Government's case may entail proof of a negative, does not relieve it of its burden.

Colorado Coal Co. vs. United States, 123 U. S. 307.

The court, quoting *Greenleaf on Evidence*, said at page 319:

"Mr. Greenleaf states the rule in equivalent terms. He says, 1 *Greenleaf on Evidence*, sec. 78: 'To this general rule, that the burden of proof is on the party holding the affirmative, there are some exceptions, in which the proposition, though negative in its terms, must be proved by the party who states it. One class of these exceptions will be found to include those cases in which the plaintiff grounds his right of action upon a negative allegation, and where, of course, this negative is an essential element in his case.' And, in sec. 80: 'So, where the negative allegation involves a charge of criminal neglect of duty, whether official or otherwise; or fraud, or the wrongful violation of actual lawful possession of property; the party making the allegation must prove it, for in these cases the presumption of law, which is always

in favor of innocence and quiet possession, is in favor of the party charged'."

Colorado Coal Co. vs. United States, 123 U. S. 307.

"The dignity and character of a patent from the United States is such that the holder of it cannot be called upon to prove that everything has been done that is usual in the proceedings had in the Land Department before its issue, nor can he be called upon to explain every irregularity or even impropriety in the process by which the patent is procured."

United States vs. Marshall Mining Co., 129 U. S. 579.

"In this respect, the United States, as a landed proprietor, stand upon the same footing with the private citizen. The burden of proof in such cases is upon the Government. The presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the Government charged with the alienation of public lands, can only be overcome by clear and convincing proof."

United States vs. Iron Silver Min. Co., 128 U. S. 673.

"It is true that the defendants are charged in general terms with being purchasers with notice.

"It is true that the United States is not bound by the Statute of Limitations, as an individual would be. And we have not recited any of the foregoing matters found in the bill

as sufficient of itself to prevent relief in a case otherwise properly cognizable in equity. But we think these are good reasons why a bill which seeks under these circumstances to annul a decree thus surrounded by every presumption which should give it support, shall present on its face a clear and unquestionable ground on which the jurisdiction it invokes can rest."

United States vs. Throckmorton, 98 U. S. 61.

The two lower courts, in discussing the question of *bona fide* purchasers, select certain portions of Mr. Smith's testimony, and their conclusions are based thereupon. We insist that these extracts, standing alone, or read in connection with the entire record, fail utterly to even remotely prove the issue, to say nothing of doing so in the clear, convincing and satisfactory manner declared necessary by the foregoing authorities and innumerable other decisions of this court.

On the other hand, we contend that the conclusions reached are wholly unwarranted, and that—

"So far from there being the satisfactory evidence here pointed out of a fraud against the Government having been perpetrated in this case, there is really little but suspicion, fierce denunciation, and a bitter use of such words as 'fraud', 'deceit' and 'imposition'. If the case stood alone upon the testimony introduced by the Government, it would, so far as any fraudulent purpose is concerned, do but little more

than raise a suspicion that the parties engaged in the transaction sought their own interest at the expense of the Government, and not always by the most appropriate means; but, when the testimony for the defense is considered, it refutes, not only the existence of any such fraudulent intent or dishonest acts, but it removes from the main actors in the matter even the suspicion of having used underhand and improper means for the accomplishment of their purposes."

United States vs. San Jacinto Tin Co., 125 U. S. 273.

It follows that upon the point under discussion this case falls squarely within the rule announced in *Beyer vs. Le Fevre*, 186 U. S. 114.

II.

We have already discussed the second point sufficiently, but, in passing, wish to add that, in the *McCaskill case*, the proceedings before the Department were wholly *ex parte*, and the decision merely *pro forma*. The claimant and his witnesses admitted that they were guilty of deceit. Here the proceedings were not *ex parte*, but an actual contest was held as to whether the land was coal or agricultural, one coal claimant (Williams) actually tendering the full cash payment. His testimony is not very definite as to when his contest was made, but it must have been at the time the homesteaders made final

proof. The Land Office records also show that Whitworth and his associates made repeated filings in order to keep their coal claims alive. The Register and Receiver must have taken cognizance of all these things and have dismissed the coal contest before issuing the Receiver's receipt.

It also appears that, before the patents were issued, the whole matter came before the Commissioners of the General Land Office, who cancelled the "expired but uncancelled declaratory statements" or coal applications. (R. p. 177.)

Judge Hanford in deciding the case said:

> "* * * When their final proofs were submitted, the Register and Receiver of the local Land Office were apprised of adverse claims, and by inquiry could readily have obtained as much information concerning the mineral character of the land as the Government has submitted for the guidance of this Court in the decision of this case. * * *
>
> (R. p. 186.)

He thereby again indulges in the violent presumption that these officials committed fraud, neglected their duty, and acted capriciously and arbitrarily, notwithstanding the absence of proof and the fact that the bill contains no such allegation.

The Circuit Court of Appeals, in commenting

upon Mr. Williams' testimony, says that he had witnesses to support him and that he tendered his money. They also quote this question and answer:

> "As the result of that showing they (*the Land Office officials*) (italics ours) refused to accept your tender and turned down your filing?
>
> A. Yes, sir."

The opinion then proceeds with the assertion that "the record contains no evidence that there was any formal contest in the Land Office."

Concede that the proof in this particular might have been more specific, we nevertheless submit that there is sufficient to show an actual contest. In any event, as said before, there is no suggestion in the bill or proof that these agents of the Government were guilty of malfeasance by neglecting to consider evidence of the character of this land so forcibly and frequently brought to their attention by the coal claimants. In the absence of these, it follows that, to sustain the lower courts, your Honors must not only indulge in an erroneous presumption, but go farther and reverse the Department upon a question of a fact. The result will be to vacate a patent upon speculative instead of satisfactory testimony and to usurp a jurisdiction which you have heretofore denied yourselves.

III.

In the *McCaskill case* you decided that the corporation was chargeable with knowledge acquired by its president and secretary. The proof, however, was that they had actual knowledge of the actions of the claimant and connived with him in obtaining the patents. The evidence was clear and convincing, and showed beyond doubt that the corporation was organized for the very purpose of acquiring the patented land. It was distinctly proved that these officers had actual knowledge of all the circumstances and probably aided the claimant. Here there is no such proof, nor is it even claimed that Mr. Smith, or any other person acting for appellant assisted the homesteaders.

The appellant acquired its knowledge of this land through two sources, viz: the report of the engineer employed by Smith, and the opinion of its attorney regarding the title. Mr. Smith said he knew nothing of the character of this property when Brooks first submitted it to him and it follows that the Company can only be charged with what he subsequently learned from the engineer. There is no proof that he knew whether the entrymen had acquired the land by fair means or foul, or whether they entered it under the homestead or mining laws.

This end of the matter was left to the attorney who examined the title and he knew nothing of the deal except what appeared from the abstract. For all the record shows, he may have thought that the Company was acquiring it for agricultural or other purposes. In any event, neither he or Mr. Smith had reason to suspect fraud, but were entitled to assume the validity of the patents.

There was no such lapse of time in the *McCaskill case* as shown here, and the Government proved its cause with clearness and precision.

Everything here is based upon conjecture and speculation, and the fact that the necessary negative was difficult to prove does not relieve the Government from the burden it assumed and shift it upon the appellant.

For the reason that the *McCaskill case* recognized every point for which we contend, and for the further reason that the facts here justify their application, we submit that it is a conclusive authority in our favor.

In conclusion, we respectfully submit that there was an adversary proceeding before the Department and that its decision is binding upon the Government; that the decisions of the lower courts

are absolutely unsupported by any competent or satisfactory testimony; and that all evidence of a speculative character was clearly and convincingly overcome by the testimony of Mr. Smith and other witnesses who testified on behalf of the appellant.

For the foregoing reasons we respectfully submit that the case should be reversed and the bill dismissed with costs to appellant.

Respectfully submitted.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

WASHINGTON SECURITIES CO., appellant, *v.* THE UNITED STATES. } No. 367.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a decree of the Circuit Court of Appeals affirming a decree of the Circuit Court which set aside four patents issued under the homestead law, and quieted the Government's title to the land against the claim of the appellant, which had purchased from the patentees. (R., 187.)

The lower courts united in finding from the evidence that the land was chiefly valuable for its coal deposits; that this fact was known at, and long before, the time of entry; that the patents were procured by false and fraudulent representations to the

contrary; and that the defendant was charged with notice of the fraud when it purchased and therefore could not claim the status of a *bona fide* purchaser.

For the opinion of the Circuit Court see R., 185. For that of the Circuit Court of Appeals, see R., 200, and 194 Fed., 59.

The land in controversy is section 34 of township 22 north of range 7 east of the Willamette meridian. The particulars of the entries, patents, and subsequent conveyances are as follows:

> East half of the east half of the section; entered by Turner September 10, 1900; final commutation proof and entry at the local land office January 9, 1902; patented November 2, 1904; afterwards conveyed by Turner and wife to C. J. Smith as the agent of the defendant, and by Smith to the defendant.
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> West half of the east half of the section; entered by Forsyth June 20, 1901; final commutation proof and entry at the local land office November 25–27, 1903; patented August 3, 1904; afterwards conveyed by Forsyth and wife to C. J. Smith as the defendant's agent, and by Smith to the defendant.
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> The northwest quarter of the section; entered by Olsen August 5, 1901; final commutation proof and entry at the local land office May 6, 1903; patented November 1, 1904; thereafter conveyed in part by Olsen to Spaight, and thereafter conveyed in whole by Olsen, Spaight, and Spaight's wife to C. J. Smith as the defendant's agent, and by Smith to the defendant.

The southwest quarter of the section; entered by Barbee December 31, 1902; final commutation proof and entry at the local land office March 30, 1904; patented December 12, 1904; thereafter conveyed by Barbee and wife to C. J. Smith as the defendant's agent, and by Smith to the defendant.

The purchases by Smith for the defendant occurred in 1906. (R., 116.)

The bill (R., 2 *et seq.*) alleges, the answer (R., 9 *et seq.*) admits, and the land office records show specifically (R., 126, 138, 152, 165), that each of the entrymen supported his initial entry by making and filing a nonmineral affidavit, in the usual form required by the regulations, representing, among other things, that he was well acquainted with the character of the land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of the land was such as to enable him to testify understandingly with regard thereto; that there was not, to his knowledge, within the limits thereof any deposit of coal; that it was essentially nonmineral land, and that his application was not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing the tract for agricultural purposes.

In like manner it is alleged, admitted, and proven that each entryman gave sworn testimony and made and filed affidavits at final proof, in which he stated not only that the land was most valuable for agri-

cultural purposes, but also there were not, to his knowledge, any deposits of coal within it, and positively that there were no indications of coal upon it. See the nonmineral affidavits filed at final proof. (R., 130, 141, 156, 168.)

In the "Homestead proofs," or depositions, the entrymen and their witnesses (two in each case, or eight in all) were all asked this question:

> Question 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? If so, describe what they are and state whether the land is more valuable for agricultural than for mineral purposes.

The answers were, "None" or (literally or in substance) "None to my knowledge." (R., 131, 132, 134, 143, 145, 146, 158, 159, 161, 171, 172, 173.) Turner said, "Not any" (R., 173); Forsyth, "I have made an effort to determine as to minerals and coal *and have found none.*" (R., 146.)

It will be borne in mind that each witness and claimant also stated that he was well acquainted with the land to which his testimony related.

Now, in contrast with all these assurances, by affidavit and deposition, upon the faith of which the entries and patents were allowed, the bill avers that the land was known to be chiefly valuable for coal at the time of entry; that each of the entrymen was aware of the fact and that his evidence to the contrary was false and given for the purpose of defrauding the United States; and the answer, while denying

the fraud, concedes (R., 9) "That said land contained [i. e., at time of entry] and still contains valuable workable deposits of coal." The Government produced a dozen witnesses, most of whom had long been familiar with the land, and some of whom were acquainted with the entrymen and their history, the result of whose testimony was to demonstrate that the land was chiefly valuable for coal, that this was generally known since a time far anterior to the entries and must have been known to the entrymen when they made their affidavits and depositions. Indeed, the facts thus established, joined with the other circumstances of the case, compel the inference that the coal furnished the incentive for the entries. The defendant, on the other hand, made practically no attempt to dispute this showing beyond some testimony to prove that the land had some value for agriculture and timber. It neither called, nor explained its failure to call, the four entrymen and their final-proof witnesses. The defendant bought the land as coal land, relying upon the report of a mining engineer named Hawkins, who had first examined the tract (R., 100, 119); but, although he was apparently obtainable as a witness (R., 122), this expert was not called, nor was his report produced, nor was any reason vouchsafed for these omissions. The theory of *bona fide* purchase is evidently the main reliance of the defense; but before coming to that we will go more fully into the facts concerning the land and the patents.

Review of the evidence upon the character of the land and the fraud in the entries.

The witness Whitworth (R., 77), a civil engineer of long experience in mining and prospecting for coal, testified that, in company with others, he discovered the coal in April, 1882, at the south quarter corner of the section. He and other persons associated with him opened up the cropping there, traced it a short distance east and west, and drove a slope and a drift in the coal at a place some 800 feet east of the quarter corner and about 400 feet north of the south line of the section. These workings were on the land afterwards entered by Forsyth. (See sketch map, Exhibit E, R., 179), and close to the west line of the Turner tract. Another vein was opened near the west quarter corner, on the Barbee tract (R., 79, and Exhibit E), and a tunnel was driven there for about 150 feet. A vein was also found on section 33, near the northwest corner of section 34, striking almost directly toward that section (south 65° east), and upon that vein two tunnels were driven, so that the coal was followed to a point 60 feet from the section line (R., 79, 80) next to the Olsen tract. The vein first discovered (in the southeast quarter of section 34) was of a strong bituminous coal (R., 80) over 12 feet thick at the place of discovery and 8 feet thick at the tunnel and slope (R., 97); that found near the west line in section 33 was semibituminous (R., 80), over 6 feet thick, with a barren streak of 6

inches (R., 97). All the veins were regular as far as traced, comparatively free of foreign matter (R., 97), and the coal merchantable in both quality and quantity (R., 81), and, in the opinion of this witness, all divisions of the section were more valuable for coal than for anything else (R., 81), though it has some agricultural value (R., 80). He and his associates, as a result of their examinations, were very sure that the coal existed in the east half of the east half (the Turner tract), and the northwest quarter (the Olsen tract), though their actual workings, uncovering the veins within the section, were confined to the west half of the east half (the Forsyth tract) and the southwest quarter (the Barbee tract).

Their operations extended through many years and entailed an expense of $8,000, their purpose being to develop and hold the land for subsequent purchase under the coal-land law. Most of the work was done before the township was surveyed, and (afterward, doubtless) filings were made upon the land (declaratory statements) to hold the coal. About the year 1884, as the result of difficulties and litigation with the Oregon Improvement Co., during which Whitworth's men were ousted of possession and again reinstated, one John L. Howard was inducted into the Whitworth association, through a compromise arrangement, under which Howard was to represent a one-third interest and defray an equivalent part of the expenses. The chief business of the Oregon Im-

provement Co., according to the testimony of the witness, C. J. Smith (R., 99), who was formerly its manager, was "railroad, steamship, and coal." It owned the Franklin and Newcastle coal mines (the former situate in the immediate vicinity of section 34) and a railroad running to them. (R., 99.) This company, through Howard, continued in the "association" with Whitworth, Maguire, Smithers, and Colman until at least as late as 1897, if not longer (R., 97, Complainant's Exhibits F to J; R., 180–184), paying its share of the expenses for work and "refiling." (R., 183.) Very soon after the homestead entries had been filed, Whitworth and one Sidney Williams went upon the land to continue their prospecting. Whitworth testifies (R., 82) that he set some men at work near the east line of section 34. Turner and Forsyth appeared with firearms and ordered them to stop, threatening to shoot the first man who crossed the line.

> Q. What was the conversation as near as you can remember it?
>
> A. Well, I told them that of course I was satisfied the coal went through there and I wanted to find it, and that we were interested in coal and wanted to show it up on that portion of the section. I said to Mr. Forsyth, "Of course, if we are allowed to go over on the west half of the east half it will be a very small matter to trace the coal down and show it on the east half of the east half," but he said he would not allow us to go. (R., 83.)

The tunnel on the Forsyth tract, 8 feet high by 6 feet wide, was still open a short time before. It was not concealed. Both Turner and Forsyth were miners. The workmen were then taken to the Olsen tract and set to work "tracing the vein on 33 across onto 34." They were notified to quit. The section had been generally known in its vicinity as coal land ever since the first discovery of coal—"I think by everyone that has any knowledge of coal, of King or Pierce County." It has the reputation of being good coal land. (R., 84.)

The witness Sidney J. Williams (R., 49) was very familiar with section 34, having visited it every year during 20 years last passed, except the last four or five, when he went there but twice. He confirmed the existence of the tunnels and the good quality of the coal.

> Any man that has ever been in that country—in that coal belt there, and been around those coal mines and been there, would know that it was coal land. (R., 54.)
>
> I have been going upon that section ever since I was about nine years old * * * and I have been going into those tunnels and seen the croppings all over it, so naturally when I go there all I can see is coal. (*Ib.*)

The section is about 4 miles from Franklin and the same distance from Palmer—places near which there were coal mines. Williams knew both Turner and Forsyth, the former for 20 years. Turner was at one time a clerk in the store of the Oregon Im-

provement Co. at Franklin, and afterwards ran a store of his own at Palmer. Forsyth he knew as a miner working in the Burnet Mine near South Prairie. (R., 52.) Immediately after the initial homestead entries were made, Williams, with one Julius Klinker, went upon the eastern part of the section.

> I went on to go on to the tunnel and I met Mr. Forsyth and he told me not to come any further, and I told him I was going to the tunnel. He says, "You can't go to the tunnel," he says, "if you go any further I will shoot you." He had a gun in his hand at the time, and I kept on walking towards him, and he told me not to come any further, he would shoot me. So then I went back off the section.
>
> Q. Did you tell him for what purpose you wanted to go on the land?
>
> A. I came there to go where the coal was, the tunnel.
>
> Q. Did he say anything about the coal?
>
> A. He told me he would not let me go there. (R., 51.)

Upon cross-examination (R., 52) it appeared that Williams's purpose was to make a coal filing on the tract in the east half of the section where the tunnel and slope were, which had been covered by the Forsyth entry. He actually attempted such a filing very soon after the homesteads were filed, and offered to pay the coal-land price for 160 acres ($3,200) at the local land office, but the offer was refused and the filing rejected. See R., 53.

Q. Did you keep your filing good?

A. Yes, sir; I made a tender of the $3,200 to the land office.

Q. Then you contested their filing, did you?

A. No; it didn't go any further. They refused to accept my money; the land office held it was more valuable for other purposes, and gave me back my money.

Q. And what, if any, showing did you make to substantiate your filing?

A. I made the same talk I have made here about the coal being there.

Q. In what way did you make that showing?

A. I had witnesses.

Q. That was before the office here?

A. Yes, sir.

Q. And, as the result of that showing, they refused to accept your tender?

A. Returned——

Q. (Interrupting.) And turned down your filing?

A. Yes, sir.

This matter is further explained in Williams's redirect and recross-examination (R., 59):

Q. Did I understand you to say that you contested Forsyth's homestead entry or he contested your coal entry?

A. He contested the coal entry.

Q. Did you have a hearing before the land office?

A. No, sir.

Q. Was any evidence introduced?

A. No, sir.

Q. Why not?

A. The matter was dropped; they refused to accept it.

Q. They refused to give you any hearing?

A. Yes, just refused to accept the money and just tendered it back; that is as near as I can remember; that is all that was done.

Q. Was there no hearing before the land office?

A. No; no hearing.

Q. No witnesses examined?

A. No sir.

Recross-examination:

Q. What did you mean, Mr. Williams, when you said you had witnesses to make the showing?

A. I went down there—when I went down to make my filing—took the witnesses over to prove that I had been on the land and over the land, made a tender of the money and they tendered back the money to me, refused to accept it, stating that there had been a contest filed.

Q. That there had been what?

A. A contest filed, and they handed me it back. That is as far as I went with it. I don't know just exactly who was with me at that time.

Q. Well, you did not contest it then?

A. No, sir.

Q. You just dropped out of it?

A. I just let the matter drop.

Julius Klinker (R., 59), a man of experience in coal mines and property, went all over the section, prospecting it for the Northern Pacific in 1898.

He found good commercial coal actually exposed on all subdivisions except the east half of the east half. Four veins were already opened, two by tunnels and two by slighter excavations, and he found four more. He continued at the work for four or five months (R., 66), driving tunnels into Sugar Loaf Mountain, which, as the testimony generally shows, is a hill of five or six hundred feet altitude, situate at about the center of the section and sloping down over a good part of it. Two other men worked with him. (R., 61.) Everyone in the vicinity knew it to be coal land. (R., 67.) Has known Turner twelve or fourteen years (R., 62); he ran stores in near-by mining towns. The witness corroborates Williams's statement that Forsyth put them off with a gun. Olsen always worked at Black Diamond. Barbee had worked at drilling for coal. (R., 63.)

Patrick Walsh (R., 67) formerly worked in the coal mines at Renton, Black Diamond, Franklin, and Newcastle. First visited section 34 in 1886, passing over the trail which traverses the southeast and southwest quarters. At that time there was a tunnel and a slope. The coal was visible on the trail. He knew of four veins—the one in the tunnel, one farther north, and two on the trail besides. Two had been explored at the surface only. Turner was clerking in Franklin store. Thomas Spaight (Olsen's first grantee?) was working at butchering at Black Diamond for the Black Diamond Coal Co.

John J. Fraser (R., 69), a coal miner, had worked in mines at Kangley and Durham, Franklin, Lawson, and Black Diamond, in the vicinity of this section. He first worked on the section about 23 years ago—i. e., 1886. Four or five persons (Jim Maguire, Fred Hansen, and others) were there then sinking a slope in the southeast quarter, taking out the coal and dumping it. It was good coal—a considerable quantity of it was used at Durham—tons of it were burned at Maguire's saloon there. They packed it home in sacks and burned it during the winter. In 1893 this witness did some work driving a tunnel and taking out coal on the northwest quarter for Maguire who "was holding this section." He remembers a slope and tunnel in the southeast quarter, a tunnel on the southwest quarter, and one on, or just on the edge of, the northwest quarter. These were all partly driven in 1885 when he first went over the trail. After Durham "opened up," in 1888, the land was generally spoken of as coal land, and many went to see it but it was then unsurveyed. Durham is in section 2 of the next township south—that is a section whose northwest corner is coincident with the southeast corner of section 34. The Alta mine, in which the witness worked and on which there was a good showing of coal, is only three-fourths of a mile from section 34. There was also a good showing in the Kangley.

Turner lived in Franklin and Palmer for the last 18 or 19 years. Barbee came to Ravensdale in 1900, where he did carpenter work, framing timber for the

mine there, building chutes, fixing cars, etc. Olsen worked in the Kangley mine in 1893, and afterwards at Lawson, where a new mine was opened near the Diamond. He was a miner. Forsyth "most of the time during the time he made his homestead entry" was at the Barnett coal mine, South Prairie. R., 72:

> Q. Did you ever have any conversation with any of these homesteaders with regard to being a witness for them on their homestead entries?
>
> A. No. Mr. Barbee asked me once in Ravensdale if I would and I stated to him this way, that I could not see my way clear to do it.
>
> Q. Did you state why you could not see your way clear?
>
> A. Well, I did state to him that the coal was visible and that there was considerable of tons of coal out on the dump there, all piled in sight; that it didn't look very good for a man to go and testify as a homesteader.

T. B. Corey (R., 13), a "coal-mining man" for 20 years and superintendent of the Oregon Improvement Co.'s mines in 1890, went to section 34 in that year, at the request of one H. W. McNeal [McNeill, see R., 182], who was then resident manager of the company and whose immediate successor as such was C. J. Smith. Corey made a written report on the land which was turned over to McNeill. He found a tunnel driven 50 feet on a vein of 6 feet of good coal, which he thinks was in the southwest quarter; also a slope which was full of water. (R., 16.) Apparently

he did not go any farther, but from what he saw and from consultations with one Williams and a chief mine inspector, who were better informed, he drew the conclusion that three-fourths of the land was good coal land. This witness then had charge of the Franklin mine in that vicinity. The Kangley and Durham mines were on adjoining sections. He considered section 34 better coal land than section 26, on which the Kangley mine was being operated at that time. He had heard of section 34 as coal land for probably a year before his visit and thinks it was generally known as such. (R., 16.)

Samuel Starkey (R., 20), a coal miner all his life, had lived at Durham (adjoining sec. 34), 20 years, and had worked in the Newcastle, Black Diamond, Durham, and Occidental mines in that county. Worked on section 34 twenty-four years ago. It is rough, very rough in parts—a "regular mountain," called Sugar Loaf, five or six hundred feet high. Most of the southeast quarter is pretty level. "As I told Mr. Smith, I would not give $10 for anything only for the coal and the timber that was on it." There is much small timber suitable for poles and lagging. Sugar Loaf Mountain is gravelly and in parts rocky. He worked on the tunnel and slope in the southeast quarter. The tunnel is about 50 feet long. There are coal outcroppings near the south line. The land is coal land and he has known this ever since he worked on it. "I really believe there is not a man living in 10 miles of that place but what knew it was coal land at that time"—24 years ago. (R., 23.) Black Dia-

mond is 7 miles away; Franklin and Lawson 5 or 6. He did the work for Mr. Williams who was superintendent of the Newcastle mine at the time, in 1885. The tunnel was already driven in some distance. He worked on it for about six weeks. Coal had already been opened up on the Barbee tract. During the past 15 years Turner lived first at Kanasket, a little over a mile from section 34; then for a number of years at Palmer, two miles and a half from it. Previously he had lived at Franklin, working in the mine and store. R., 25:

> Q. Did you ever talk over the character of this land with him, about the time he made the homestead entry?
>
> A. Yes.
>
> Q. What was the nature of your conversation?
>
> A. I told him he would "never get it because" I said, "it is coal land."

He became acquainted with Forsyth just before he came to take up his homestead. R., 26:

> A. Mr. Forsyth came to my house and he told me that Mr. Burdett—Charlie Burdett, from South Prairie—had sent him up to do some work, and he wanted to know if he could board there. I says, "Certainly," I says, "I am awful glad that you are going to do some mining work." And he boarded with me until he fixed the cabin up—the old cabin—he boarded with me until he fixed the cabin up, and then when he left I found that he came up there to homestead it. So I asked

him, I says, "Why did you lie to me when you came up and told me you were sent up here to do some work on this property for the coal?" "Why," he says, "I told you that," he says, "because if I had told you I was going to homestead it you would not have me to board."

Q. Where did he tell you he was going to do work on the coal, on that section?

A. Section 34.

Q. For whom?

A. He said Charlie Burdett had sent him from South Prairie.

Q. Did he tell you what the work was to be that he was going to do there?

A. Well, he said—Well, I understood him to mean that he was going to work—to do some work with the coal mine, he said.

Q. Did you ever have any other conversation with him relative to the character of this land?

A. Oh, when I found out what he was doing, I was done with him.

Q. What was Forsyth's business around there prior to the time that he went upon this homestead?

A. He used to come up there and fish, to fish in Green River, occasionally.

Q. Do you know whether he has ever worked as a miner?

A. Oh, yes.

Q. Where?

A. I believe he worked at South Prairie, Roslyn.

Olsen had been a coal miner for 15 years. He lived and worked as a miner at Kangley on a section adjoining 34.

Barbee was working as a carpenter and miner at Ravensdale, 5 miles away.

R., 27:

> Q. Did you ever have any conversation with Barbee relative to the coal character of this land?
>
> A. Yes, sir.
>
> Q. When was that?
>
> A. When he came up there to live; I tried to persuade him not to go on it.
>
> Q. What did you tell him?
>
> A. I told him, I says, "Barbee, it is coal land." "Well," he says, "if I can get a filing on it, it will be all right, won't it?"
>
> Q. What did you tell him?
>
> A. "Well," I says, "you will have trouble, sure."

F. G. Smithers (R., 37) first went upon the section in 1883 or 1884, and went upon it frequently thereafter "until about 20 years ago"—1889. "Some places all over the section you might raise a little on. I would not consider it agricultural land at all," there not being enough land in one body suitable for agriculture. He knew of the slope, and 20 years ago saw the coal taken from it used as fuel. Turner lived at Newcastle, and later worked in the Oregon Improvement Co.'s store at the Franklin mine, 6 or 8 miles from section 34. The section was generally known as coal land even as far as Newcastle, 30 miles

off. Smithers filed on a part of the section once, but let the filing drop for financial reasons.

Daniel Boyle (R., 40), a coal miner, discovered coal on the section in 1881, at a time when there was nobody in the neighboring country except a few men who had been sent up from Newcastle by the Oregon Improvement Co. to hunt for coal. (R., 43.) In 1883 he went again and found coal cropping out. Two years later he was working for that company, and its superintendent, Mr. Williams (father of the witness Sidney J. Williams, R., 49), sent him with three other men (increased to seven or eight in 1884, R., 42) to open up the coal on the section. He thought they were working for the company. (R., 41, 47.) They first drove two tunnels on the northwest quarter, opening in two places a vein of "about the best coal in the country." (R., 41.) About a year later they drove another tunnel on the southeast quarter in "pretty fair" coal, "not quite so good as the coal on the north side of the section." (R., 42.) These two veins ran east and west, with nearly a mile between them. Quite a good many men worked there afterwards. Sugar Loaf Mountain occupies the center and takes in a part of each quarter. There is "quite a piece" of level land on the east side. (R., 42.) Eighteen years ago, and long before that, "everybody up there"—"all the old settlers"—knew the land to be coal land. (R., 43.) A "whole lot" of mines were being operated in that vicinity in 1890, and it was generally known then among the mining men that this was a coal

section. The witness had worked in pretty nearly all of these mines. He was thoroughly acquainted with Turner, who worked for the Improvement Company at Franklin, and later lived for about 12 years at Palmer. Palmer is about 3 miles from section 34. Forsyth worked at the South Prairie mine. (R., 43, 44.)

The timber on the section "don't amount to anything, only just a little piece on the northwest quarter." (R., 44.) There is a piece of pretty fair agricultural land on the east side but the rest "don't amount to much." (R., 45.) This witness is positive in his opinion that the whole section is more valuable for coal than for any other purpose. (R., 47.) He and another man took over 60 tons of coal out of one of the prospect holes in 1886. (R., 49.)

S. D. Fraser (R., 74), who has worked as a practical miner in the county since 1884, visited section 34 in 1885 and at various times since, and worked upon it to some extent. He does not pretend to know all of the veins and workings, but knows a tunnel on the southeast quarter, one on the southwest, and one on the northwest. Has seen three different veins. The coal looked like fair, marketable coal. Turner has been in the vicinity 16 or 17 years—at Franklin, Palmer, and Cumberland. Olsen worked at Kangley, Lawson, and Black Diamond, and has been "in the country" a good many years. Barbee has not been there very long, so far as the witness knows. The section was generally reputed in the vicinity to be coal land.

Earl Evans (R., 75) found indications of coal on the section in 1882. He saw a slope there in 1885 or thereabouts and three or four men working. Has often heard the section called coal land.

N. H. Martin, (R., 92) once an "outside foreman" for the Oregon Improvement Co. at Newcastle, saw coal on section 34 in 1882—a vein of good appearing coal, 4 or 5 feet thick as he recalls, in a prospect tunnel. Visited the section again twice. Some parts of the land were very rough. There was small timber on a good deal of it. Thinks the land unsuitable for agriculture.

Lawrence J. Colman (R., 101) went around the section and over a large portion of it in 1892, while in company with F. H. Whitworth, and testified from notes made at the time. He was one of the persons associated in the Whitworth enterprise and had been upon the land before. He made measurements of dip, strike, and thickness of the coal veins at the excavations visited and took samples which were subsequently analyzed, the results being given in his testimony. (R., 103.) He found a natural exposure of coal, and a prospect hole cut through the vein, at the south quarter corner, an opening into the vein 810 feet farther east and 400 feet north (near the line separating the Forsyth and Turner tracts), and a pit and 10 or 15 feet of tunnel on the vein in the southwest quarter, as well as the workings on the vein in section 33 near the northwest quarter of section 34. (R., 103.) This last vein, "taking into consideration the dip and the strike, would run under this high hill

(Sugar Loaf Mountain) in the center portion of section 34." It contained 64 inches of coal. (R., 104.) The dip varied from 30° to 37° northeast and the strike was south 67½° east. (R., 107.) The vein at the south quarter post showed 84 inches of coal (R., 104), the dip was 23° north, and the strike very nearly east and west. (R., 106.) The vein in the northeast part of the southwest quarter carried 91½ inches of coal. (R., 104.) The dip was 3° to 7° north and the strike was roughly estimated as northwest. (R., 106.)

Though conceding some agricultural and timber value (R., 102), this witness is of the opinion that the land is chiefly valuable for mining (R., 105). He has known of the land as coal land since the early eighties. (R., 106.) He thinks the east half of the east half "good agricultural land," but concludes that the coal deposit which was traced 800 feet to within 500 feet of it extends into it.

Although the Government's witnesses concede that there are parts of the land—particularly on the east side—which are suitable for agriculture, they all concur in stating emphatically that the section as a whole is chiefly valuable for coal. The testimony shows that the timber is for the most part small, unsuitable for lumber, suitable only for lagging, poles, and possibly ties, and of comparatively little value.

The defendant produced three florists, who had recently been brought to the land from a distance to view it and testify concerning its worth for agricul-

ture. (R., 109–115.) They got off the train after noon and boarded it again to go home at 5.10 p. m. the same day. (R., 113.) Their examination, therefore, was confined to a few hours' duration. They approached the section from the southeast, placed foot upon a small part of it, and confessedly based their opinions mainly on the quality of the soil surmised from distant views and the character of the timber. These witnesses did not pretend to know anything of the value of land in that locality or of the possibility of profitable farming under the conditions there existing. They found the land all uncultivated. (R., 110.) The defendant introduced a number of photographs (R., 184 *et seq.*) showing small tracts of open land about the houses of the entrymen, and also revealing the wild nature of the country and the insignificance of the improvements.

C. J. Smith, the vice president and one of the trustees of the defendant (R., 99), and the same person who bought the land as the defendant's agent, was the only other witness called by the defendant to explain its character and value. He testifies (R., 120 *et seq.*) that "there is *some* pretty fair timber." When asked if the timber has any value he says, "Yes. The timber has value. We have had one or two requests to buy timber. I do not know how much there is, because I never had it cruised." He shows, as all the witnesses conceded, that the land has *some* value for timber and agriculture, but carefully abstains from giving any estimate. By this

witness, as well as by the cross-examination of the Government's witnesses, defendant's counsel sought enunciations of the self-evident truth that a property which appears from surface indications to be very valuable for coal may turn out a disappointment after much money has been expended in development. The Kangley mine, for instance, on a contiguous section, is said to have failed because of a hidden dike of igneous rock. But Smith did not allow the defendant to buy the land in controversy until he had satisfied himself "thoroughly well" that that dike did not extend within it. (R., 120.) His testimony, considering what is in it and what is significantly omitted, leaves not the slightest doubt that the company bought only for the coal and only after it had become convinced that the property was a valuable coal property. The expert who made the examination for the company before the purchase (he was not called nor was his report produced) "took some men with him, and in looking over the ground they *uncovered some prospect holes* and *dug out some tunnel* that had been more or less filled with water and débris." (R., 120.) Smith and the company took time to verify the reports of the engineer, and "upon the verification of those reports and the abstract of title the land was purchased."

> Q. You and the company then bought the land for coal land?
>
> A. Yes, after the examination had been made the report was satisfactory. (R., 100.)

Review of the Evidence Relating to Notice.

C. J. Smith was manager of the Oregon Improvement Co. for seven years, from 1891 to about 1898. (R., 98.) That company then owned the Franklin and Newcastle mines (R., 99), and the first of these, as we have seen, was very near to section 34. During his connection with the company Smith visited the Franklin mine from time to time. (R., 99.) The company then, through Smith, was paying out money periodically "for keeping up the coal declaratory statements" on this land by refunding to Mr. Howard "the expense, a portion of the expense that he was paying for some people exploring and locating our land." (R., 118.) This refers, of course, to the operations and filings of the Whitworth-Howard "syndicate." There are divers letters and other documents in the record—files of the Oregon Improvement Co. (R., 94 *et seq.;* 180 *et seq.*), which prove that Smith, as general manager and later as receiver also, was informed that this section was being "held" as coal land, in part for the company, and that he inquired into the value of the land and afterwards, as late as 1897, authorized payment of the company's share of the expenses. Under date of November 8, 1890, Howard writes Smith (R., 180) that—

> at the conclusion of a fight * * * growing out of an error of our mining superintendent, I was enabled to get from Smithers and Whitworth a declaration that I had a one-third interest in section 34 of the township north of

> the one in which Franklin mine was situated. * * * It was then regarded as a valuable section and for a long time afterwards we were figuring upon an extension of our lines in its direction. It is unsurveyed land and requires to be held. Various reports have been made to me about its value—some favorable, some otherwise. We have been contributing one-third of the expense of holding it. When Mr. McNeill first came to Seattle I asked him to have it examined and pass final judgment on it. If it be good, we want to keep it, otherwise we want to let it go. I have several times written him to advise me regarding it, but he has never replied. During my last visit to Seattle he promised to send Mr. Corey to make a report on it, but I have as yet heard nothing. Will you please take the matter up and advise me whether the company should longer contribute toward the cost of maintaining possession?

In a letter of December 8, 1890 (R., 181), Howard again calls Smith's attention to the matter, and asks him to pass upon it.

December 9, 1890, Smith writes to McNeill (R., 182):

> Please let me know what you think of section 34 *marked on the map* in the name of J. L. Howard. Is there anything in it, or have you ever made any examination of it?

January 13, 1897, Whitworth writes to Howard (R., 183), inclosing an account of the expenses of section 34 for two years, and saying: "Don't you want to buy out some or all of our interests * * *

or do you know of anyone else who wants to buy a good section of coal cheap?"

That the account and letter were both brought to the attention of Smith is established by the voucher approved by him, as receiver and general manager (R. 184), "For amount advanced to cover expenses in refiling, etc., on section 34, in 1895 and 1896, as per letter of F. H. Whitworth to Jno. L. Howard, dated 1/13/97, attached."

This was only three years before the making of the Turner entry.

Smith bought this land for the defendant in 1906. (R., 116.) Some months before he was approached by a Mr. Brooks, who had an option on it and wanted to sell. (R., 117.) Smith first referred him to a Mr. Collins, "who had been looking for coal lands."

> And a month or something of that sort elapsed—I do not remember how long—and Mr. Brooks came to me and told me that Mr. Collins had given it up, and his option was about to expire, and in the meantime this Washington Securities Co. had been virtually formed—the formation of it had been virtually agreed upon, but the organization had not been perfected, and I referred him to the Washington Securities Co., and on the discussion of the matter with the president of the company at that time he agreed to look into the matter if I would have an examination made of the property and see whether there was any coal on it, and I sent a man up there, who spent some considerable time looking over the property and making

> the examination, and it was upon his report that the president of the company agreed to purchase it, but the company not being formed at that time he requested that I take the title in my name and transfer it to the company when the legal organization of the company was perfected.

Smith does not pretend that at this time he had forgotten the Whitworth-Howard transactions and correspondence. His nearest approach to it is to say that when Brooks first approached him he told Brooks that he did not know about the section, but that when Brooks described it with reference to the Franklin, Kangley, and other adjacent mines, he told Brooks that he had an indistinct remembrance that it had been brought to his attention some years before; that he had never seen any report or examination of it, was not aware of its value, did not know whether it was coal or not, and did not care to go *any further* with it; "that was as to myself personally." But when the defendant company was formed he referred it to them. (R., 119.) This witness denies that he knew the value of the property, and the existence of tunnels upon it, etc., but he does not deny that the facts which he learned while general manager and receiver of the Oregon Improvement Co. were present to his recollection when he made the purchase.

He denies that he knew the land had been homesteaded when Brooks first came to him, but he does not deny that he knew it or that other representatives

of the defendant knew it before the purchase was made. An abstract of title was procured and the title was examined by the company's attorney, Mr. H. R. Clise. (R., 118.) Such an examination could not well have failed to reveal the fact that patents had issued under the homestead law. The recitals in the patents would have shown it.

Smith was not merely an agent of the defendant company. He was one of its promoters, one of the original subscribers for its shares, and one of its trustees, as well as its vice president, upon its organization. He made the purchase with the company's funds. (R., 99.)

The defense of *bona fide* purchase was not made in the answer, which contains merely denials and admissions of matters averred in the bill. Neither do the bill and the answer combined present this issue fully. The record does not show the character or value of the consideration or the time when it passed.

ARGUMENT.

I. The patents were illegally issued.

1. *Since this question depends entirely upon the facts, the finding of the courts below is conclusive, in the absence of clear error.*
2. *The finding of the courts below was sustained by ample evidence.*
   (*a*) The land was known coal land, and therefore reserved by law from homestead entry.

(*b*) There was fraud in the entries; the entrymen knew, or were chargeable with knowledge, of the character of the land.

(*c*) The patents were unlawful even though the entrymen were honestly mistaken.

II. The defendant has not sustained the defense of bona fide purchase.

1. *The burden was upon the defendant to allege and prove clearly all the elements of this defense.*
2. *The defense was neither pleaded nor proven by the defendant.*
3. *The evidence shows affirmatively that the defendant was on notice of the illegality of the patents when the purchases were made.*

(*a*) This is a question of fact.

(*b*) The defendant was notified that the land had been entered and patented under the homestead law.

(*c*) It knew the character of the land when it purchased.

(*d*) It knew or was notified that the mineral character was known before the entries were made.

(*e*) The information which Smith, the defendant's agent, had previously acquired was imputable to the defendant; the inference that it was present to his mind when the purchase occur-

red is supported by the evidence; but the notice to the defendant flowed also, independently, from the other facts attending the purchase.

III. There was no conclusive adjudication of the character of the land in the Land Office proceedings.

I.

The patents were illegally issued.

1. *Since this question depends entirely upon the facts, the finding of both courts below is conclusive, in the absence of clear error.*

Texas & Pacific Ry. Co. v. *Railroad Commission*, No. 186, October term, 1913.

Chicago Junction R. Co. v. *King*, 222 U. S., 222.

Dun v. *Lumbermen's Credit Ass'n*, 209 U. S., 20.

2. *The finding of the courts below was sustained by ample evidence.*

(*a*) *The land was known coal land, and therefore reserved by law from homestead entry.*

The answer admits that the land at the time of entry contained, and still contains, "*valuable workable deposits of coal.*" (R., 9.) This admission applies to all of the tracts entered and is enough in itself to sustain the proposition that the homestead law was inapplicable. *Diamond Coal & Coke Co.* v. *United States*, No. 192, October term, 1913.

The evidence establishes clearly that the land was known to be more valuable for coal than for any

other thing. There can be no doubt of the correctness in this respect of the finding of the courts below. Without contradiction the proofs show:

That this land was part of a coal-bearing and coal-producing region; that there were many operating mines in the vicinity, some of them quite near; that the land was generally believed and reputed to be coal land, particularly among the inhabitants who were interested in coal mining (and the record affords no ground for supposing that there were many who were not); that for years before the filings were made much labor and money had been expended in opening up the coal veins upon and immediately adjacent to the section; that a large vein of merchantable coal had thus been conspicuously revealed upon the Forsyth tract (W. ½ of E. ½) near the center of the south line of the section, and again near the east boundary of that tract, under circumstances justifying the conclusion that it must penetrate the Barbee tract (SW. ¼) on the one hand and the Turner tract (E. ½ of E. ½) on the other; that another large vein of merchantable coal had been in like manner revealed in the northeast part of the Barbee tract under circumstances indicating that in all probability it must exist in the Olsen tract (NW. ¼) also; that a third large vein of merchantable coal, trending directly toward and presumably traversing the Olsen tract, had been opened to sixty feet from his west line; and that there were still other veins upon the section which had not been so well exposed.

The Government's witnesses were unanimously of the opinion that the section was chiefly valuable for its coal, and this evidence also was not only uncontradicted but was firmly corroborated by the answer and by the conduct of the defendant in purchasing the land as coal land after a careful expert examination, without apparent thought of its value in other respects—an examination which proceeded upon the facts which existed and were patent before the entries occurred.

While the evidence concerning the tract entered by Turner was not quite so strong as that in the other cases, because there was more level land there, and the coal was not actually opened upon it, only five hundred feet separated this tract from the tunnel and slope on the Forsyth tract, and there is abundance of evidence to justify the inference that the same vein, if not others also, extended into the Turner land. The formation was apparently unbroken, and the dip and the strike were such as to require the inference that, assuming a continuity of the deposit which there was no reason to doubt, the coal could readily be found and developed there as it was within the Forsyth entry. This was a large vein of good coal, and the probability of its presence must have made the acquisition of the Turner tract exceedingly important to anyone desirous of acquiring and operating the remainder of the section for coal production.

The homestead law declares "nor shall *any* mineral lands be liable to entry and settlement under its provisions." (R. S., 2302.) "In all cases *lands val-*

uable for minerals shall be reserved from sale," etc. (R. S., 2318.) "Vacant coal lands of the United States" are subject to entry under the coal-land law. (R. S., 2347.)

> To justify the annulment of a homestead patent as wrongfully covering mineral land, it must appear that at the time of the proceedings which resulted in the patent the land was known to be *valuable for mineral;* that is to say, it must appear that the known conditions at the time of those proceedings were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. (*Diamond Coal & Coke Co.* v. *United States, supra.*)

In view of these statutory and judicial declarations, it is submitted that the fact that the land in this case had, in parts, some value for timber and some value for agriculture, is immaterial to its status as coal land, purchasable under the coal-land law and not purchasable under the homestead law. Nearly always land valuable for coal or other minerals will be found valuable in some degree for cultivation, grazing, timber, or other purposes also. But its status does not depend upon a comparison of these values. If it is valuable for coal, it is mineral land, no matter how valuable it may be in other aspects, and the higher (coal land) price must be paid by the purchaser.

But even if this were otherwise, it is manifest from the record that the timber and agricultural values

in this case were indefinite, never seriously considered, and not to be considered in comparison with the coal value, which even the defendant by its conduct, its admissions, and its silence has conceded to be the principal value.

(*b*) *There was fraud in the entries; the entrymen knew, or were chargeable with knowledge, of the character of the land.*

As the land was reserved by law as mineral land, the local land officers committed plain error in allowing the homestead entries. That the error is attributable to the false representations contained in the homestead papers concerning the character of the land is not to be disputed. If those representations had not been made, and *a fortiori*, if the true facts had been revealed, the entries would never have been allowed and the patents would never have been issued. Hence the purposes of the entrymen are immaterial. It is not even necessary to inquire closely whether they were honest or dishonest. If they knew the facts, they were guilty of a wilful fraud. If they did not know them, the error of the land department in issuing homestead patents for land reserved by law is directly attributable to their reckless asseverations of what was clearly untrue.

But if proof of wilful fraud be necessary, there is proof in this record. The reputation of the entire section as coal land had been notorious for years, especially among people interested in coal mining. It was in the midst of a coal mining region, with

active coal mines in close proximity. The exposures of coal were patent on the surface. All of the entrymen had been employed as coal miners, or in connection with coal mining operations, by one or more of the local coal companies, so that all must have had peculiar knowledge of the *indicia* of coal deposits and of their probable value in that region. Their incentive to take up the land for coal is evident, while an incentive to take it for agriculture is quite improbable. They made insignificant improvements, cultivated slightly, or not at all, commuted promptly, and sold the land as coal land not long after patent. The idea that these men were not aware of the presence of the coal is wholly incompatible with the evidence in the case and with their sworn assertions that they had been over the land and knew it.

Furthermore, there is direct evidence that Turner, Forsyth, and Barbee were all warned while their entries were pending, or before, and that one of them, Forsyth, admitted that he had been sent there to file. All four, with the possible exception of Turner, were presumably impecunious, and it is unlikely, to say the least, that men of their calling and circumstances would have come to this wild land and found and expended the funds necessary to commute the entries merely because of such doubtful agricultural possibilities as the evidence reveals.

They all commuted their entries to hasten the titles as soon as the law would permit it, or not very much later, and sold the land as coal land a few

years after the patents had issued, the evidence of coal value at the time of sale being none other than that which had existed before the entries were made.

If these entries were honest, why did not the defendant call the entrymen and their proof witnesses, or at least some one of them, to explain away the damning circumstances?

Upon the whole we submit that to say that the courts below were *clearly wrong* in their view of the evidence would be absolutely unwarranted.

(c) *The patents were unlawful even though the entrymen were honestly mistaken.* Even if it were possible to believe that the entrymen were all honestly mistaken, the result would be the same. The legal right to issue the patents depended on the character of the land, and not upon the state of the entrymen's minds. *Mullan* v. *United States,* 118 U. S., 271, 278.

II.

The defendant has not sustained the defense of bona fide purchase.

1. *The burden was upon the defendant to allege and prove clearly all the elements of the defense.*

In *Boone* v. *Chiles* (10 Pet., 177, 211) this court, with many citations of authorities which we here omit, expressed itself as follows:

> The protection of such *bona fide* purchase is necessary only when the plaintiff has a prior equity; which can be barred or avoided only by the union of the legal title with an equity aris-

ing from the payment of the money and receiving the conveyance without notice and a clear conscience. It is setting up matter not in the bill; a new case is presented, not responsive to the bill; but one founded on a right and title operating, if made out, to bar and avoid the plaintiffs' equity, which must otherwise prevail. The answer setting it up is no evidence against the plaintiff, who is not bound to contradict or rebut it. It must be established affirmatively by the defendant independently of his oath. In s tting it up by plea or answer, it must state the deed of purchase, the date, parties, and contents briefly; that the vendor was seized in fee and in possession; the consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independently of the recital in the deed. Notice must be denied previous to and down to the time of paying the money and the delivery of the deed; and if notice is specially charged, the denial must be of all circumstances referred to from which notice can be inferred and the answer or plea show how the grantor acquired title. The title purchased must be apparently perfect, good at law, a vested estate in fee simple. It must be by a regular conveyance; for the purchaser of an equitable title holds it subject to the equities upon it in the hands of the vendor and has no better standing in a court of equity. Such is the case which must be stated to give a defendant the benefit of an answer or plea of an innocent purchase without notice; the case stated must be made out; evidence will not be

permitted to be given of any other matter not set out.

See also:

McDonald v. *Belding*, 145 U. S., 492, 498.
Smith v. *Orton*, 131 U. S., Appendix LXXV, LXXVIII.
Simmons Creek Coal Co. v. *Doran*, 142 U. S., 417, 437.
Johnson v. *Georgia, &c., Co.*, (C. C. A.), 141 Fed., 593.
Secombe v. *Campbell* (C. C.), 2 Fed., 358.
Nickerson v. *Meacham* (C. C.), 14 Fed., 884.
Lakin v. *Sierra Buttes G. M. Co.*, 25 Fed., 337, 342.
Jewett v. *Palmer*, 7 Johns. Ch., 64.
Rozell v. *Chicago Mill & Lumber Co.*, 76 Ark., 525, 527.
39 "Cyc", 1778 *et seq.*

2. *The defense was neither pleaded nor proven by the defendant.*

Since this defense was treated by both sides as being in the case, we will pass over the absolute failure of the defendant to plead it, but the failure to prove it is quite another matter. The character of the consideration, its value, and the time when it passed are not shown. Notice was not disproved; on the contrary, the evidence establishes affirmatively that notice existed.

3. *The evidence shows affirmatively that the defendant was on notice of the illegality of the patents when the purchases were made.*

(*a*) This matter of notice comes down to a mere question of fact, concerning which the conclusion of

the courts below should be accepted unless clearly wrong.

(*b*) Conceding that, generally speaking, it is not incumbent on the purchaser of patented land to inquire into the proceedings before patent, it must also be conceded as a self-evident proposition that he is charged with notice of the recitals contained in the patent itself.

> Apart from this we hold appellant chargeable with notice. The rule is thus stated by the Virginia Court of Appeals in *Burwell's Adm'rs* v. *Fauber* (21 Gratt., 446, 463): "Purchasers are bound to use a due degree of caution in making their purchases, or they will not be entitled to protection. *Caveat emptor* is one of the best settled maxims of the law and applies exclusively to a purchaser. He must take care and make due inquiries or he may not be a *bona fide* purchaser. He is bound not only by *actual* but also by *constructive* notice, which is the same in its effect as actual notice. He must look to the title papers under which he buys and is charged with notice of all the facts appearing upon their face or to the knowledge of which anything there appearing will conduct him. He has no right to shut his eyes or his ears to the inlet of information and then say he is a *bona fide* purchaser without notice. *Simmons Creek Coal Co.* v. *Doran*, 142 U. S., 437.

This court knows without proof that all patents by the Government contain recitals of the law under which they are issued, and, specifically, that such recitals are contained in all patents issued under the

homestead law and in all patents issued under the coal-land law.

The defendant does not deny that it knew the patents in question were homestead patents. It is proven that it had an abstract (Smith had it himself; R., 118) and that the title was examined by its attorney before purchase. Smith does not remember whether this attorney was one of the directors or not (R., 118), but at all events notice to the attorney was notice to the defendant.

39 Cyc. 1763, note 96.
Amstrong v. *Ashley*, 204 U. S., 272.
Jennings v. *Carter*, 53 Ark., 242.
Stokes v. *Riley*, 121 Ill., 166, 174.
Griffith v. *Griffith*, 9 Paige, 315.
Sickles v. *White*, 66 Tex., 178, 179.
Polk v. *Cosgrove*, 4 Biss., 437.
Griffin v. *Franklin*, 224 Mo., 667, 683.

Hence there can be no question but that, before purchase, the defendant was notified that the patents were the results of homestead entries. If this was not so, it would have been easy for the defendant to show the contrary and, as we have seen, it was its duty to produce the proof.

(*c*) The defendant knew before purchase that the land was coal land. It took care to obtain in advance an examination and report by an expert, and then purchased the land for coal mining.

(*d*) The only possible question is whether the defendant knew, or was notified, that the presence of

the coal was known or knowable before the final entries were made.

In view of the wholesale and outrageous frauds which have been committed against the public domain in this country, we seriously doubt whether this court would be inclined to hold that a person knowing that a tract of land was patented under the homestead law and believing it to be very valuable for coal would be under no duty to inquire into the validity of the entries. Such a ruling would open too easy a market for fraudulent titles, exact too little diligence of purchasers, invite collusion, and add unnecessarily to the burden, already too great, of protecting the public land and enforcing the public-land laws. But that is not this case. The defendant's engineer admittedly saw the natural outcroppings and the old developments; he must have reported them to the company; they must have furnished the principal bases for his opinion and for the company's decision to buy. Smith, who was the *alter ego* of the company in the purchase, admits that old workings were discovered, and that he satified himself "thoroughly well" about the dyke before he would take the property. (R., 120.) Smith, owing to his former connection with the Improvement Company, during which he was accustomed to visit the Franklin mine (R., 99), must have had considerable knowledge of the region and its history. He could readily have ascertained the origin of these old workings. Even a superficial investigation would have informed him,

if he did not know already, that the section was known and reputed to be coal land and that the prospects and tunnels had existed years before the entries were made.

(*e*) Smith also had obtained knowledge of the section while he was general manager and receiver of the Oregon Improvement Company. As late as 1897 he authorized the use of that company's funds to pay for "assessments" and filing fees. (R., 184.) According to his letter to his predecessor, McNeill (R., 182), the whole section was "marked on the map" (evidently a map of the company) "in the name of J. L. Howard." Undoubtedly he must have been a party to the scheme to acquire this land, in whole or in part, for the company, lawfully or unlawfully, under the coal-land law, if it seemed worth while to do so.

> The rule that notice to the agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction and present to his mind when he is acting as such agent. *The Distilled Spirits,* 11 Wall., 356.

Now it is insisted by the appellant that the knowledge thus acquired had vanished from Smith's mind when he came to purchase for the defendant less than 10 years later (not 16, as it is stated in the opposing brief, p. 24). In view of the full discussion of this matter contained in the opinion of the Circuit Court of Appeals (R., 203–206), we will not

expend space upon it. It is enough to say that the contention is most improbable on its face and that it appears by the testimony of Smith himself that, before he bought, his memory had been refreshed concerning his former relations to this section. The effect of all the evidence on this question, direct and inferential, was weighed by the courts below and determined against the defendant. This was purely a finding of fact for which there was justification, if not compulsion, in the evidence, and which, therefore, is not a proper subject for reexamination.

But the case does not depend upon the notice which Smith acquired in the earlier years. Without regard to that, he and the defendant were put upon inquiry at the very time of examination and purchase, as we have indicated above.

III.

There was no conclusive adjudication of the character of the land in the Land Office proceedings.

The facts upon which the defendant relies in this connection are, first, that it appears by the Land Office papers that the progress of Turner's entry was for a time delayed by a "coal protest" which was dismissed by the Commissioner of the General Land Office in October, 1902 (R., 177), and by some expired coal declaratory statements which the commissioner canceled in August, 1903 (*ib.*), and, second, that it appears by the testimony that some effort was made through Whitworth and Sidney Williams to oppose final proofs before the local office (R., 83,

52, 53, 59). Whitworth says (R., 83) that after the homestead filings had been made, he and others not named, having been notified by that office that they "must show from recent examination the character of the land," made application "to have the Government take it in hand and give us an opportunity of showing the character of the land, but they refused." He does not say that he made any coal filing or protest, or that the matter was followed up in any way. Williams says that, after the initial homestead entries had been made, he filed on a quarter section including the Forsyth tunnel (R., 53), or went to the office to make such a filing (R., 59). He tendered the coal price, and produced witnesses to prove the coal character. But he did not contest the Forsyth entry (R., 59); there was no hearing, no evidence was introduced, no witnesses were examined, and the land officers simply refused the money, "stating that there had been a contest filed" (*Ib.*). He also says that they "held it was more valuable for other purposes, and gave me back my money." (R., 53.) He did nothing further, but "just let the matter drop." (R. 59.) Whether the protest and declaratory statements mentioned in the Land Office papers were related to these abortive proceedings does not appear; probably they were not, since they affected the Turner entry only.

One fact stands out clear from all this uncertainty, and that is that whatever filings or objections were made were abandoned. There is nothing to demonstrate that any proof was offered in such form as to

justify the officers in receiving it or in delaying the homestead proceedings. When the first homestead papers were filed, the register certified that the land was free from "prior valid adverse right." (R., 124, 136, 150, 164.) Williams's attempt to file was evidently after the initial homestead entry and before or after final proof. Of course, under those circumstances, the filing could not be allowed or his money received. If he desired to attack the homestead entries, his recourse was to file a contest or protest and follow it up by proofs. This he did not do, and in its absence, neither the local officers nor their superiors had anything before them to adjudicate, save to dismiss any protest which was not prosecuted diligently according to the rules.

The most that can be said is that in some informal and ill-defined way the attention of Government officials was called to the possibility that the land was coal land and to the desire of third persons to purchase it as such. According to the degree of certainty and reliability of the information thus afforded, it might or might not have been the duty of the land officials to suspend the homestead entries for further investigation. The duty, if it existed, was a duty to the Government alone. It is little short of absurd to argue that the unlawful neglect of such a duty amounts to a lawful *adjudication* establishing conclusively the nonexistence of the facts which would have been disclosed if the duty had not been neglected. If the defendant's position were sound, every fraudulent patentee could defeat a suit of this kind by show-

ing that in some way the register of the land office was put on notice of his fraud.

Here the defendant stands precisely in the shoes of its grantors. If they could not have complained of the refusal of Government officials to probe the truth of their representations at the instance of outsiders, the defendant may not be heard to do so.

It is quite evident that opposing counsel confuse adjudication with failure to adjudicate. There is fallacy also in their assumption that an actual adjudication in a contest between private claimants would necessarily estop the Government. Doubtless it may be true that when the validity of a patent depends upon facts whose existence the department is authorized to determine, and when the evidence produced against the patent in a suit for cancellation is conflicting, and is substantially the same as the evidence considered by the department before the patent issued, the finding of the department should be held conclusive by the court. This would be no less true of an *ex parte* proceeding than of one in which a protest or contest was present. The specialty of the department's function in determining the facts which lead to patents imports finality when the function has been fully exercised in the manner contemplated by the law, but when such exercise has been prevented by fraud or mistake, so that a patent goes forth in violation of the law, it becomes the duty of the courts to set aside the patent, because the department can not do this itself nor deal further with the land while the patent remains outstanding.

See—

United States v. *Stone*, 2 Wall., 525.
Mullan v. *United States*, 118 U. S., 271.
Germania Iron Co. v. *United States*, 165 U. S., 379.
Williams v. *United States*, 138 U. S., 514.

A patent procured by false representation is unlawful not merely in the sense that every conveyance, whether by the Government or an individual, which results from a violation of the principles of fair dealing, is unlawful; it is unlawful also because the law does not justify the issuance of any patent in the absence of a proper inquiry and determination of the facts upon the existence of which the right to the conveyance is made to depend by the statutes. Hence it is that mere notice to a Government agent, such as would bind a private person in respect of his own property, can not affect the Government, since the law does not contemplate that notice shall take the place of inquiry or allow its own operation to depend upon the diligence or honesty of its servants. Hence, also, no protest or contest or other proceeding before the department which fails to disclose and evoke a determination upon the evidence of fraud can be accepted as a reason why that evidence should be denied its normal consequence when revealed to a court of equity. Especially must this be so when the contest or protest is the affair of a private claimant unauthorized in any way to represent the Government, and under no duty to protect its rights.

CONCLUSION.

Bona fide purchasers, when truly such, are rightly the favored of equity. This ground of defense, however, is one that lends itself with peculiar facility to collusion and fraud. Only by constant insistence upon diligent inquiry may the equities of defrauded owners be protected, and only by demanding the greatest particularity of proof upon the part of purchasers may the imposters be distinguished from the worthy. It is no hardship to exact of a purchaser that he shall have been careful to follow up all clews to wrongdoing before he bought, and that afterwards he shall stand ready to allege and prove with fullness and particularity all that he did and all that he knew about the title. In the performance of these duties the defendant has failed most signally. The evidence which it produces is incomplete and evasive. Other evidence, documentary and oral, which might have been produced and which would have shed much additional light upon the question of the defendant's good faith, is withheld without excuse. The case is lacking in that frankness and fullness of disclosure which should always characterize the defense of a *bona fide* purchaser, and the evidence, as it stands, certainly justifies, if it does not require, the conclusion that the defendant was not such a purchaser.

It is respectfully submitted that there is no proper reason to disturb the finding of the courts below.

ERNEST KNAEBEL,
Assistant Attorney General.

APRIL, 1914.

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WASHINGTON SECURITIES CO. *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 367. Argued May 7, 8, 1914.—Decided May 25, 1914.

Findings of fact concurred in by two lower Federal courts will not be disturbed by this court unless shown to be clearly erroneous.

A purchaser from a patentee is bound to take notice that the land was acquired under the homestead law when that appears in the patent, and if the other circumstances show that the purchase was made with knowledge that the land was known to be coal land when it was entered by the patentee, the purchaser must be deemed to have

taken with notice of the fraudulent obtaining of coal lands under the homestead law.

Where the application and proof of an entryman is strictly *ex parte*, the proceedings are not adversary, and while the findings of the land officer may not be open to collateral attack, they are not conclusive, but only presumptively right, against the Government in a suit to cancel the patent on the ground that it was obtained by fraud.

194 Fed. Rep. 59.

THE facts, which involve the validity of patents for lands issued under the homestead law and claimed by the Government to have been fraudulently obtained because the lands were known to be valuable for coal at the time, are stated in the opinion.

Mr. H. R. Clise, with whom *Mr. Charles Kennedy Poe* and *Mr. Charles Poe* were on the brief, for appellant.

Mr. Assistant Attorney General Knaebel for the United States.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a suit to cancel four patents issued under the commutation provision of the homestead law and embracing a full section of land in King County, Washington. The bill charged that the patents were fraudulently procured by falsely representing to the land officers that the lands were agricultural in character, and therefore subject to homestead entry, when in truth they were at the time known to be valuable coal lands and therefore excepted from the operation of the homestead law. After the patents were issued the lands were conveyed to the appellant, and there was a further charge that it took the title with notice and knowledge of the fraud. The Circuit Court found that these charges were true and entered

a decree for the Government; and the Circuit Court of Appeals, taking a like view of the evidence, affirmed the decree. 194 Fed. Rep. 59.

The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this court unless shown to be clearly erroneous. *Stuart* v. *Hayden*, 169 U. S. 1, 14; *Towson* v. *Moore*, 173 U. S. 17, 24; *Dun* v. *Lumbermen's Credit Association*, 209 U. S. 20, 23; *Texas & Pacific Railway Co.* v. *Railroad Commission of Louisiana*, 232 U. S. 338. Applying the rule to the evidence in this case, we think the findings below should not be disturbed.

Only two of appellant's contentions merit special notice.

Without any uncertainty the evidence demonstrated that the lands were known to be valuable coal lands when the homestead entries were made and commuted, and that the affidavits and proofs to the contrary, upon which the patents were procured, were false. Not only were the lands in a well known coal region and generally reputed to be coal lands, but a tunnel, slope and other openings upon them, costing about $8,000, had disclosed that they contained coal of such quality and quantity as to render them valuable for coal mining. The entrymen so understood, and resorted to severe measures to keep coal prospectors off the lands.

The appellant's chief contention is, that there was no evidence, or at least no substantial evidence, that it took the title with notice or knowledge of the fraud perpetrated by the entrymen. But the record shows otherwise. The appellant's vice-president, who represented it in the negotiations, had theretofore, as agent of another company, learned that the latter was interested in the coal development work before mentioned and was, with others, bearing the expense of that work with a view to acquiring the lands as coal lands. This was recalled to his mind at the time of the negotiations. He caused the section to be

examined by an engineer, who found and reported the tunnel and other openings disclosing the coal, and, following that report, the transaction was consummated on the theory that the lands were valuable for their coal contents. There was no claim that there was any development work or coal discovery after the entries were made, and it is quite apparent from what was said of the engineer's report that the tunnel and openings gave visible evidence that they were not recently made. Of course, the appellant was bound to take notice that the patentees with whom it was dealing had obtained the lands under the homestead law, for it was so recited in the patents. *Simmons Creek Coal Co.* v. *Doran*, 142 U. S. 417, 437. In these facts there was, as we think, persuasive evidence that the appellant took the title with notice or knowledge of the fraud.

It is contended also that the proceedings resulting in the patents were not *ex parte* but adversary; that the land officers found the lands to be agricultural in character, and that this finding was conclusive upon the Government. No doubt those officers found from the proofs submitted to them that the lands were agricultural and not coal lands, for that was a prerequisite to issuing the patents, but the proceedings were not adversary in any true sense of the term. The applications and proofs of the entrymen were strictly *ex parte*. The Government was not called upon to make any adverse showing, no issue was framed, no hearing was had, and no one represented the Government save in the sense that the land officers did so. As this court has often held, the findings of the land officers in such a proceeding, although not open to collateral attack, are not conclusive against the Government when it sues to cancel the resulting patent upon the ground that it was obtained by means of false and fraudulent proofs. *United States* v. *Minor*, 114 U. S. 233; *McCaskill Co.* v. *United States*, 216 U. S. 504, 509, and cases cited. In such

a suit the action of the land officers is given appropriate effect by treating it as presumptively right and as requiring the Government to carry the burden of proving the fraud by that class of evidence which commands respect and that amount of it which produces conviction. *Diamond Coal & Coke Co.* v. *United States*, 233 U. S. 236, 239.

Decree affirmed.